



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants- CNR, RR

For the landlord – OPR, MNR

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to set aside the Notice to End tenancy for unpaid rent or utilities and for an Order to reduce rent for repairs, services or facilities agreed upon but not provided. The landlord applied for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy set aside?
- Are the tenants entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agree that this month to month tenancy started in September 2009. Rent for this unit is \$500.00 per month and is due on the 15th of each month. This was a verbal agreement between the tenants and the former landlord.

The landlord testifies that his brother was the former landlord for these tenants. However when his brother became sick the landlord obtained a Power of Attorney over his brothers affairs and became the landlord for the tenants. The landlord testifies that his brother informed him that the tenants owed some rent for one month however the landlord has no evidence to confirm which month or how much rent was owed at that time.

The landlord testifies that since he has become landlord the tenants failed to pay rent on time each month and got into arrears with the rent. The landlord has provided rent receipts showing that the tenants paid different amounts of rent which were credited to the arrears. The landlord testifies that the last amount of rent paid by the tenants was for March, 2013. Since that time no rent has been received. The landlord issued the tenants with a 10 Day Notice to End Tenancy on June 19, 2013 and this was served upon the tenants on that day by posting it to the tenants' door.

The landlord has provided a copy of this Notice in documentary evidence. The Notice informs the tenants that \$1,500.00 is outstanding which was due on June 01, 2013. The tenants had five days to pay the rent or dispute the Notice or the tenancy would end on July 02, 2013. The landlord testifies that the tenants did not pay the outstanding rent and have since failed to pay rent for July, 2013 of \$500.00. The landlord requests to amend his application to include unpaid rent for July. The total amount of unpaid rent is now \$2,000.00.

The landlord seeks an Order of Possession effective as soon as possible and seeks a Monetary Order for \$2,000.00.

The tenant attending disputes the landlords claim that there is outstanding rent for May. The tenant testifies that they asked the landlord if they had now caught up with the arrears and were told that they had at that time. The tenant testifies that the landlord told the tenants that they could stay in the house until the house was sold but then served the tenants with the 10 Day Notice. The tenant testifies that when the landlord came to collect the rent they told the landlord that the male tenant was sick and they needed the money for medication and food. The tenant refers to the rent receipts provided in evidence.

The tenant testifies that the landlord would not make repairs to the unit and that the unit is an illegal suite. The tenant agrees that they have never asked the landlord in writing to make any repairs. The tenant seeks to reduce the rent because repairs were not made.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant has testified that they had paid all rent for May, 2013 however the receipts provided in evidence clearly shows that the amounts paid in April and May were for previous month's rent arrears and the tenant has provided no corroborating evidence to show that the rent was paid for April, May, June or July, 2013.

I therefore find the landlord has established a claim to recover the unpaid rent for these months. I will allow the landlord to amend his application for unpaid rent for July, as the tenants continue to reside in the rental unit and would be aware that rent was due for

July. The landlord will receive a Monetary Order for the amount of **\$2,000.00** pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days and although they did file an application to dispute the Notice within the five days, as I have found that rent remains outstanding then the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the tenants claim to reduce rent for repairs, services or facilities agreed upon but not provided. The tenants have provided no evidence to support their claim that there were repairs required in the rental unit that were not corrected by the landlord. The tenant attending agrees that they did not put anything in writing to the landlord to request repairs or even to notify the landlord that there were repairs needed. I must therefore deny the tenants claim to reduce their rent.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,000.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 30, 2013

Residential Tenancy Branch

