



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, CNR, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants, and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and a request for a Monetary Order for \$1000.00.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for a Monetary Order for \$777.49.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenants have put on their application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy, and a request for recovery of the \$50.00 filing fee, and I dismiss the remaining claims with liberty to re-apply.

The issues I dealt with at this hearing are whether or not to cancel a Notice to End Tenancy that's been given for nonpayment of rent and whether or not to issue an order for outstanding rent.

Background and Evidence

The landlords testified that:

- The tenants failed to pay the July 2013 rent and therefore on July 15 they were personally served with a 10 day Notice to End Tenancy.
- To date the tenants have failed to comply with that notice, and have failed to pay any further rent.
- They are therefore requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding rent totaling \$2000.00.

The tenants testified that:

- The rental unit is in need of significant repairs so they decided to withhold the rent until those repairs are done.
- They believe the Notice to End Tenancy should be canceled and that they should not have to pay any rent until the repairs to this rental unit are completed.
- They do not have an order from the arbitrator allowing them to withhold any rent, they just did so on their own on the advice of their lawyer.

Analysis

Tenants do not have the right to unilaterally withhold rent and if they do so they put their tenancy at risk.

If the tenants want to withhold rent they must first apply for dispute resolution and get an order from an arbitrator allowing them to do so, in this case they failed to get any such order.

Therefore in this case since the tenants did not have the right to withhold any rent, I am not willing to cancel the Notice to End Tenancy and I will be issuing an Order of Possession to the landlords.

Further since at this time there is two months' rent outstanding I will be issuing an order for that outstanding rent.

Conclusion

Tenant's application

As stated above the monetary portion of the tenant's application is dismissed with leave to reapply.

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to reapply.

I further order that the tenants bear the cost of the filing fee they paid for dispute resolution.

Landlord's application

I have issued an Order of Possession to the landlords that is enforceable two days after service on the tenants.

I've issued a Monetary Order in the amount of \$2000.00.

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: August 21, 2013

Residential Tenancy Branch

