



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, MNDC, OLC, RP, RR, FF, O

For the landlords – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel the Notice to End tenancy for unpaid rent, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the Act, Regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; other issues; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, the landlord also engaged an agent to act on their behalf and a translator. The parties attending gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing; the landlords' agent however testified that the landlords received a large part of the tenant's evidence late. All admissible and relevant evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenant’s application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the 10 Day Notice to End Tenancy for unpaid rent and I will not deal with the remaining sections of the tenants claim at this hearing.

Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy for unpaid rent?
- 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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on February 15, 2011, although the parties agree the tenant was allowed to move into the unit a few days earlier. This was a fixed term agreement for a year and has since reverted to a month to month tenancy. Rent for this unit was \$2,100.00 per month which was reduced in a verbal agreement between the parties to \$2,050.00 per month. Rent was due on the 15th day of each month in advance. The tenant paid a security deposit of \$1,050.00 on January 17, 2011.

The landlords’ agent testifies that the tenant failed to pay rent that was due on June 15, 2013 or July 15, 2013. The landlords issued a 10 Day Notice to End Tenancy for unpaid rent on July 24, 2013. This was served in person to the tenant on that date. This Notice states that the tenant owes rent due on June 15, 2013 of \$2,050.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 04, 2013. The tenant did not pay the outstanding rent and has disputed the

Notice in the tenant's amended application. Since that time the landlords' agent testifies that the tenant has not paid rent that was due on August 15, 2013. The landlords' agent has requested to amend the application to include unpaid rent due August 15, 2013 as the tenant continues to reside in the unit. The total amount of unpaid rent is now \$6,150.00.

The landlords have applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days after service.

The tenant disputes the landlords claim. The tenant testifies that he has not paid the rent for three months as the landlords were stealing the tenants Hydro and because the landlord rented other buildings to the tenant on the property which were unfit for use as they have failed an electrical safety test and have no permits in place for safety. The tenant testifies that as the landlords have defrauded the tenant the tenant has withheld the rent.

Analysis

I have carefully considered the admissible 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.

Consequently I find that the tenant has failed to pay rent that was due on June 15, July 15 and August 15, 2013 and the landlords are entitled to recover these rent arrears to the sum of \$6,150.00.00. I have allowed the landlords to amend their application to include unpaid rent due on August 15, 2013 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord will receive a monetary award to the sum of **\$6,150.00.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$1,050.00** in partial payment of the rent arrears.

As the landlords have been successful in this matter, the landlords are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$6,150.00
Less Security Deposit	(-\$1,050.00)
Plus filing fee	\$50.00
Total amount due to the landlords	\$5,150.00

I accept that the tenant was 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 tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The notice is deemed to have been received by the tenant on July 24, 2013. And although the tenant did apply to dispute the Notice the tenant agrees that the rent has been withheld for these three months.

Based on the foregoing, I find the landlords have established a claim for an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$5,150.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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

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

The tenant's application for an Order for the landlord to comply with the *Act*, for an Order for repairs to the unit, site or property will no longer be valid or enforceable as the tenancy is ending. Therefore these sections of the tenants claim are dismissed without leave to reapply. As the tenant has been unsuccessful with this claim the tenant must bear the cost of filing his own application.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss and to reduce rent for repairs, services and facilities agreed upon but not provided are dismissed with leave to reapply.

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: September 05, 2013

Residential Tenancy Branch

