



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on June 16, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlords are entitled to an Order for Possession?
- b. Whether the landlords are entitled to recover the cost of the filing fee?
- c. Whether the tenants are entitled to a monetary order and an order for the reduction of rent and if so how much?
- d. Whether the tenants are entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on December 1, 2011. The rent is \$900 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$450 at the start of the tenancy.

The landlord served the tenants a two month Notice to End Tenancy on June 16, 2013. The tenants vacated the rental unit on August 1, 2013.

Landlord's Application:

Analysis - Order of Possession:

I dismissed the landlords' application for an Order for Possession and to recover the cost of the filing fee as the tenants vacated the rental unit in accordance with the two month Notice to End Tenancy.

Tenants' Application for a Monetary Order and Reduction of Rent:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$450 at the start of the tenancy. I determined the tenancy ended on August 1, 2013. I further determined the tenants provided the landlord with their forwarding address in writing on August 7, 2013. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of

tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$900.

Section 51 of the Residential Tenancy Act provides as follows:

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Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

The landlords gave the tenants a 2 month Notice to End Tenancy on June 16, 2013.

The tenants have not deducted the equivalent of one month rent from the rent as they are entitled to under section 51 and they are entitled to recover the sum of \$900.

The tenants sought compensation for the landlords failure to provide adequate internet service as advertised. They testified the internet was not very good. They attempted to obtain internet service on their own but the service was not very good. The agent for the landlord testified internet serviced in this area is not very good. I determined the tenants failed to provide sufficient evidence to prove this claim as the tenants received the same service as the landlord. As a result I dismissed this claim.

I dismissed the tenants claim for breach of the covenant of quiet enjoyment based on a claim that the landlord was partying on a continuous basis. Policy Guideline #6 includes the following statement:

Basis for a finding of breach of quiet enjoyment

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

I determined the tenants failed to prove that the actions of the landlords amounted to frequent and ongoing interference. The tenants testified the landlords were always partying but they failed to provide precise evidence as to dates, times and conduct. They wrote two letters and the police were called a couple of times. However, in my view this is not sufficient to amount to a substantial interference. As a result this claim is dismissed.

Conclusion:

In summary I ordered the landlords to pay to the Tenants the sum of \$1800 plus \$50 for the cost of the filing fee for a total of \$1850.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: September 03, 2013

Residential Tenancy Branch

