



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, AS, OPR, OPC, MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for cause, a request for monetary compensation of \$250.00, and a request to allow the tenant to assign or sublet the rental unit.

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 Notice to End Tenancy for cause, a request for a Monetary Order for \$5000.00, a request to recover the \$50.00 filing fee, and a request to retain the full \$900.00 security deposit towards the claim.

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.

The tenants claim that they have not receive the landlords evidence package, however it's my finding that it has been properly served as it was left for the tenants at the rental property.

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

The issues are whether or not to uphold or cancel the Notices to End Tenancy and whether or not the landlord or tenants have established Monetary Claims against the other.

There is also an issue of whether or not the tenants have the right to sublet the rental unit.

Background and Evidence

This tenancy began on May 1, 2011 with a monthly rent of \$1800.00 and at that time a security deposit of \$900.00 was paid.

The landlord testified that:

- The tenants have sublet a portion of the rental unit to other tenants claiming that they were the owners of the house.

- The tenants subsequently appear to have moved out of the house themselves, however their subtenants are still in the rental unit and no rent has been paid for the months of August 2010 or September 2010.
- They have served the tenants with both a one-month Notice to End Tenancy which was served by registered mail on July 10, 2013, and with a 10 day Notice to End Tenancy which was served by registered mail on August 5, 2013.
- He is therefore requesting an Order of Possession for as soon as possible as the tenants subtenants are still living in the rental unit and he is unable to get possession without an Order of Possession.
- He is also requesting rent for the months of August 2013 and September 2013.
- The gas and electricity bills were also in these tenants name at the rental property, and another tenant in the rental property had to go without gas and electricity on more than one occasion because the tenants had the gas and electricity turned off. He is also therefore asking for compensation for that other tenant.
- When these tenants moved out of the rental property they also left a large amount of junk behind and left the rental unit in need of significant repairs. They also failed to return the garage door openers. At this point he has not had any repairs done as the subtenants are still in the rental unit and he's waiting until they're out before he does any final repairs and junk removal.

The tenants testified that:

- They had sublet a portion of the rental unit to their sister with the landlord's permission, however she moved out some time ago and they have not sublet to anyone else.
- They have fully moved out of the rental unit and there is no one else in the rental unit subletting, and therefore they have no problem with the landlord getting an Order of Possession.

- They do not however feel they should be paying for any further rent, because the landlord gave them a Notice to End Tenancy and they moved as a result of that notice.
- They had originally filed an application to dispute the Notice to End Tenancy; however they decided to comply with the notice and moved on August 10, 2013.
- They believe the landlord should be compensating them as they were forced to move without justification.

Analysis

First of all I want to clarify my finding about the service of the landlord's evidence on the respondent's.

It is my finding that the landlord properly serve the evidence package on the tenants by serving the package to the rental property, because the tenants had not given vacant possession of the rental property to the landlord, even though they claim that they had moved out.

As stated above it is my finding that the tenants haven't given vacant possession of the rental property due the landlord. I accept the landlords claim that the tenants have sublet a portion of the house and that there are still people living in that portion of the house. Therefore until everyone has moved out of the rental property the landlord has not received vacant possession and the tenants are still liable for the rent for the unit.

Therefore since the tenants have not paid the rent, and since a valid 10 day Notice to End Tenancy has been served on the tenants I allow the landlords claim for an Order of Possession for as soon as possible.

I also allow the landlords claim for outstanding rent for the months of August 2013 and September 2013.

I further allow for recovery of the \$50.00 filing fee paid by the landlords

I will not however allow the landlords claim for money to compensate the other tenant in the unit for expenses that resulted from having no power or gas. There is nothing in these tenants tenancy agreement that states that they are required to supply gas and electricity to the other tenant in the rental property and therefore if they choose to turn off the gas electricity to their rental unit they are not liable for any loss to the other tenant.

It's also my finding that the landlords claims for junk removal, repairs, etc. are premature as the landlord has not at this point done any of these repairs or junk removal as he is waiting for the subtenants to vacate before finalizing any of these estimates. This portion of the claim will therefore be dismissed with leave to reapply.

I do not accept the tenants claim that they did not sublet portion of the rental property, even on the tenant's application for dispute resolution they were requesting that the arbitrator allow them to assign or sublet, and now they claim that that was not what they were doing.

I find no merit in the tenants claims whatsoever.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

I have issued an Order of Possession to the landlord that's enforceable two days after service.

I have allowed \$3650.00 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$900.00, and I've issued a Monetary Order in the amount of \$2750.00.

As stated above the claims for compensation to the landlords other tenant for loss of power and gas are dismissed without leave to reapply.

Also as stated above the landlord's claims for junk removal, repairs, and the replacement of garage door openers are all 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 25, 2013

Residential Tenancy Branch

