



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, ERP, RP, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to dispute a rent increase; for Orders for repairs and emergency repairs; for authorization to reduce rent payable; and, monetary compensation for emergency repairs. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Although this dispute involved a 10 Day Notice to End Tenancy I had not been provided a copy of the subject Notice prior to the hearing. I permitted both parties to describe the Notice and its content during the hearing. The submissions of both parties were consistent and I have considered whether the Notice should be upheld or cancelled.

The tenants had erroneously indicated a dispute code associated to monetary claims for emergency repairs made by a tenant. The tenants confirmed they did not make emergency repairs to the property and I amended the Application to indicate the dispute code associated to monetary claims for damage or loss under the Act, regulations or tenancy agreement.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is it necessary to issue orders to the landlord to make repairs or emergency repairs?
3. Is it necessary to issue orders to the landlord with respect to a rent increase?
4. Are the tenants entitled to reduce rent payable?

5. Have the tenants established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy began in October 2006 and, after the fixed term expired, the tenancy continued on a month to month basis. The tenants are required to pay rent of \$1,400.00 on the 1st day of every month. On September 3, 2013 the landlord personally served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) with a stated effective date of September 13, 2013. The tenants filed to dispute the Notice and are still residing in the rental unit.

Both parties provided consistent testimony that the 10 Day Notice indicates that rent of \$3,050.00 was outstanding as of September 1, 2013 and that the Notice should read \$2,800.00 was outstanding since rent for August 2013 and September 2013 had not been paid when the Notice was issued.

The tenants initially submitted that they withheld rent for August and September 2013 because the property is overgrown and infested with rats; and, that the landlord did not comply with an order of an Arbitrator, issued October 18, 2012, to clean up the property. Upon review of that decision issued October 18, 2013 I noted that the Arbitrator did not authorize the tenants to withhold any part of rent if the landlord did not comply with the order. Rather, the Arbitrator stated that the tenants were at liberty to seek further remedy by filing another Application for Dispute Resolution should the landlord not satisfy the order by December 31, 2012. The tenants did not file another Application for Dispute Resolution until filing this Application. The tenants explained that although the landlord did not comply with the order of the Arbitrator the house was for sale and the tenants thought they would be moving.

After I pointed to the text messages submitted by the landlord as evidence the tenant acknowledged that the tenants did not have the money to pay rent in August and September 2013 due to a back injury of the male tenant. The tenants have not paid any monies for the month of October 2013 but claim that funds should be coming at the end of the month.

The landlord requested that an Order of Possession be provided to him as soon as possible since the tenants have not paid rent for three months and have given various excuses for not doing so.

With respect to repairs and emergency repairs, the tenants seek orders for the landlord to maintain the yard and exterminate the rats living on the property.

The tenants submitted that their monetary claim of \$5,000.00 includes: damage to the tenant's vehicle caused by rats; mental stress; yelling by the occupants living in the basement suite; the landlord lying to them; the landlord attempting to increase their rent by \$50.00 per month; and, the landlord acting smugly toward them. The tenants alleged that the landlord's failure to clean up the property as previously order resulted in rats thriving in the bushes and eating through hoses on his car.

The landlord submitted that he had cut back the bushes growing on the property and had complied with the Arbitrator's order of October 18, 2012 but that the bushes grew back in the spring and summer. The landlord had not received further complaints from the tenants about the rats. The landlord submitted that the tenant's vehicle is an old, rusty car and there is no proof any damage was caused by rats.

The landlord acknowledged that he requested an additional \$50.00 in rent from the tenants but realized this was in error as he had not served the tenants with a Notice of Rent Increase.

Documentation provided for this proceeding included: written submissions of both parties; photographs of the property and the tenant's vehicle; and, several text message exchanges between the parties in August and September 2013.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. In this case, the tenants have filed to dispute the 10 Day Notice.

Although the 10 Day Notice erroneously indicated the tenants owed rent of \$3,050.00, section 68 of the Act permits me to amend a Notice to End Tenancy were the Notice is non-compliant or incorrect, provided both parties knew or ought to have known the information that was omitted or incorrect. As both parties agreed that the amount of

unpaid rent at the time the Notice was issued was \$2,800.00 I have amended the 10 Day Notice to indicate \$2,800.00 was outstanding as of September 1, 2013.

The issue to determine is whether the tenants had a legal basis for withholding rent. The Act provides limited circumstances when a tenant may withhold rent otherwise payable to the landlord. One such circumstance is where a tenant has the authority of an Arbitrator to withhold rent. Another is where a tenant has paid for emergency repairs under the strict provisions of section 33 of the Act. In reading the decision issued October 18, 2012 I find the tenants did not have the authority to withhold any part of the rent. Nor, did the tenants pay for emergency repairs. I find I was provided no other evidence that the tenants had a legal basis to withhold rent. Therefore, I find I was not provided a legal basis for withholding rent and I dismiss the tenants' request that I cancel the Notice.

Section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

Having dismissed the tenant's request to cancel the 10 Day Notice I find the tenancy ended pursuant to the Notice on September 13, 2013. As the tenants are still in possession of the rental unit, I grant the landlord's oral request to be provided an Order of Possession. Provided to the landlord with the landlord's copy of this decision is an Order of Possession effective two (2) days after service.

As the tenancy has ended, I find the tenant's request for repair orders and a rent reduction to be moot issues and I do not consider them further.

As I was not provided evidence the tenants paid an additional rent increase the landlord requested verbally I make no award for recovery of overpaid rent. As the tenancy ended I find it unnecessary to make any order to the landlord for compliance with respect to a rent increase.

With respect to the tenants' monetary claims, I find the tenants have not established an entitlement to an award for damages for the following reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verify the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In the absence of evidence that would verify or provide a reasonable basis to quantify their losses I find the tenants failed to prove they suffered a loss of \$5,000.00 as a result of violations by the landlord. Further, the decision issued to the parties on October 18, 2012 clearly explained in two places that should landlord not fulfill the order to clean up the property by December 31, 2012 the tenants were at liberty to file another Application to seek further remedy. I find the tenants had a remedy available to them yet the tenants did not pursue that remedy in a timely fashion and, as a result, I find the tenants did not take reasonable action to mitigate their loss. Therefore, I dismiss the tenant's monetary claims against the landlord.

Conclusion

The tenant's Application has been dismissed. The landlord has been provided an Order of Possession effective two (2) days after service. 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: October 15, 2013

Residential Tenancy Branch

