



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

The landlords apply for an order of possession pursuant to a ten day Notice to End Tenancy for unpaid rent served September 8, 2013 and for a monetary award for unpaid September rent and loss of October rental income.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenancy has ended or that the landlords are entitled to a monetary award?

Background and Evidence

The rental unit is a house. The tenancy started April 15, 2013. The monthly rent is \$1900.00. The landlords hold a \$950.00 security deposit and a \$100.00 pet damage deposit.

It is not disputed that the September rent was not paid nor has money for October been paid. The ten day Notice was not challenged within the time provided for doing so and the amount demanded in it was not paid.

The tenant says that the premises was in dismal condition at move in and that he has spend a significant amount of time improving it with the landlords' knowledge and consent. In particular, the tenant cites alleged extensive remediation work he says he supplied following a flash flood in the basement of the home in August. The tenant intimates that the landlord Mr. P. (who did not attend the hearing) agreed to allow the

tenant offset some of the value of the flood remediation labour against the September rent.

The landlord Ms. P. denies any agreement to offset rent but says that the tenant was informed that if he accounted for his labour dealing with the flood, the landlords would pay him directly.

Analysis

Section 26 of the *Residential Tenancy Act* (the “*Act*”) provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement. And so a tenant may not unilaterally reduce rent because the tenant thinks the landlord owes him money.

Section 6(3) of the *Act* provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In this case the tenant alleges that the tenancy agreement between the parties, directing that rent be paid in full on the first day of each month, was verbally amended between the landlord Mr. P. and him, to accommodate monies the tenant claims to have been owed for the flood remediation work. In my view, even if those monies are owed (the tenant is free to apply to recover the money), the tenant has not proven, with his allegation of a verbal understanding, denied by the landlord Ms. P., that there was a binding variation to the terms of the tenancy agreement to reduce rent due and payable for September.

As a result, I find that the tenant owes the September rent of \$1900.00 in full and that the landlords are entitled to recover \$1900.00 for loss of October rental income. Again, the tenant is free to pursue his claim for improvement and remediation money against the landlords. In the meantime, the landlords are entitled to a monetary award of \$3800.00 as claimed, plus the \$50.00 filing fee

In any case, even had there been such an agreement, it would not affect the ending of this tenancy by operation of s.46 of the *Act* resulting from an unpaid, uncontested, ten-day Notice to End Tenancy. As this tenancy came to an end September 18, 2013, the landlords are entitled to an order of possession.

Conclusion

The landlords' claim is allowed as presented.

The landlords will have an immediate order of possession against the tenant.

The landlords are entitled to a monetary award of \$3800.00 plus the \$50.00 filing fee. I authorize them to retain the \$950.00 security deposit and \$100.00 pet damage deposit in reduction of the amount owing. There will be a monetary order against the tenant for the remainder of \$2800.00

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: October 11, 2013

Residential Tenancy Branch

