



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, LAT, CNR, RR, O, FF

For the landlords – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; to authorize the tenants to change the locks of the rental unit, to cancel a Notice to End Tenancy for unpaid rent; 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; and to recover the filing fee from the tenants for the cost of this application.

At the outset of the hearing the tenants testified that they had moved from the rental unit in September, 2013 and were removing the remainder of their appliances today. The tenants therefore withdraw their application to cancel the 10 Day Notice and to change the locks of the rental unit.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided some limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlords confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?
- Are the landlords entitled to a Monetary Order for unpaid rent or utilities?
- Are the landlords entitled to an Order of Possession for unpaid rent?

Background and Evidence

The parties agree that this tenancy started on September 15, 2012 for a fixed term tenancy which expired on September 15, 2013 with the option of continuing as a month to month tenancy. Rent for this unit was \$1,260.00 per month and was due on the first day of each month in advance.

The landlord's application

The landlords testify that the tenants failed to pay rent for August, 2013 of \$660.00. The landlord testifies that the tenants were served a 10 Day Notice to End Tenancy on August 26, 2013 in person. The landlord testifies that they served the tenants with two pages of this 10 Day Notice. The landlords testify that the tenants did not pay the outstanding rent for August and failed to pay rent for September, 2013. The landlords have not provided a copy of the 10 Day Notice in documentary evidence.

The landlord testifies that one of the tenants has been seen at the rental unit this month so they do not know if the tenants have moved from the unit as declared at the start of the hearing. The landlords seek a Monetary Order of \$1,980.00 and an Order of Possession.

The tenant JC disputes that they were served with the second page of the 10 Day Notice. The tenant testifies that the landlord served the tenants with two of the first pages of the Notice but no second page was provided. The tenants have provided a copy of these Notices in documentary evidence. The tenants had sought to have the invalid notices set aside but as they have since moved from the rental unit they testify that they no longer require this action.

The tenants' application

The tenant JC gives testimony on behalf of both tenants and testifies that the landlord had told the tenants that they City had ordered the landlord to remove the tenants from the unit. The landlords told the tenant that the City had said this was an illegal unit as the landlord did not have permits from the City to turn these former offices into rental units. The tenant testifies that when he tried to obtain a business licence from the City for his home based business he was refused a licence because the landlord had not obtained the proper permits. The tenant testifies that the landlord should have provided the tenants with three months notice to move out and then compensated the tenants for their moving costs.

On discussion the tenant testifies that the landlord did not serve the tenants with any further Notices to End Tenancy except the 10 Day Notice for unpaid rent. The tenants seek compensation of one month's rent of \$1,260.00 for having to move out due to the improper use of these rental units.

The tenant testifies that the landlord failed to make repairs in the rental unit. The shower curtain and rail were not in place and the tenants were unable to use the shower in the main bathroom. The tenants had use of another much smaller shower. The tenant testifies that the landlord also failed to repair damage to a window in the small bedroom which prevented the window from closing properly. The tenants had to put a space heater in this room because of this problem to provide adequate heat.

The tenant testifies that the tenants put these repair issues in writing to the landlords on November 15, 2012 and again in February, 2013. One of the landlords did a walk through to see these repair issues and said he would get someone to fix the problems or the tenants could do it themselves. The tenant testifies that they did not have the skills to do these repairs themselves. The landlord then asked the tenant to cover the window with plastic. The tenant testifies that they could not do this as the window had bars and was metal framed. The tenant testifies that they told the landlord they could not do these repairs but the landlord was insistent that he would not make the repairs and the tenants asked the landlord to get a professional in to make the repairs.

The tenant testifies that the landlord would also yell at another tenant living downstairs which the tenants found very disturbing. The tenant testifies that the landlord would not turn the heat on to their unit until November as the landlord told the tenants that it would cost him too much money.

The tenant testifies that up to the date they moved from the unit the landlord has still not made the repairs and the tenants seek a rent reduction from the landlord of 20 percent of their rent for 12 months of the tenancy to cover the increase in Hydro and for the inconvenience.

The landlords dispute the tenants claim for compensation. The landlords testify that they did serve the tenants with a Two Month Notice to End Tenancy for landlords use of the property; however, the landlords have not provided a copy of that Notice in evidence.

The landlords testify that they had asked the tenants to get the shower rail repaired and to invoice the landlords. The landlords testify that they had also asked the tenants to get the window repaired and to send the invoice to the landlords however the tenants did not have these items repaired.

The landlords agree that one of the landlords did get into some arguments with the downstairs tenant over unpaid rent but it was not serious enough to disturb other

tenants. The landlords dispute that they would not turn the heat on until November. The landlords' testify that the tenants wanted the heat turned on in September but it was not cool enough then to require heat.

The tenant asks the landlords if the heat is on now. The landlords respond that no the heat is not on now.

Analysis

I have carefully considered all the 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.

However I have no evidence before me that the landlord has served the tenants with a valid 10 Day Notice to End Tenancy. The landlord failed to provide a copy of this Notice and the copies provided by the tenants are identical copies of the first page only. In order for a legal notice to be valid and enforceable it must be complete. As I have not received a complete copy of the 10 Day Notice to End Tenancy Due to Unpaid Rent or Utilities I cannot determine whether the tenants were served with the complete Notice and as a result I cannot be satisfied that a valid notice was served on the tenants. Consequently, the landlords' application is dismissed. The landlords are at liberty to serve a new Notice to End Tenancy on the tenants if the tenants have not removed all their belongings by the end of this day. If the tenants do fully vacate the rental unit by the end of the day then the landlords are at liberty to file a new application for a Monetary Order for unpaid rent.

The tenants have applied for compensation for moving costs as they state the landlords should have served the tenants' with a three month Notice to End Tenancy. When

questioned, the tenants testified that the landlord had only served the tenants with a 10 Day Notice. It was explained to the tenants that there is no Three Month Notice under the *Act*. If the tenants were entitled to one month's rent as compensation then the tenants would have to show that they had been served with a Two Month Notice to End Tenancy. At the hearing the landlords' testified that they had served the tenants with a Two Month Notice, but a copy of this has not been provided in evidence for me to determine if in fact a valid Two Month Notice to End Tenancy had been served upon the tenants. Without evidence that a Two Month Notice has been served then it is my decision that the tenants are not entitled to compensation under s. 51 of the *Act* for a Two Month Notice to End Tenancy. This section of the tenants claim is dismissed without leave to reapply.

With regards to the tenants claim for a rent reduction for repairs not completed by the landlord; the landlords agree that the tenants notified the landlord about the repairs required to the shower rod and the window. The landlords have testified that they asked the tenants' to make these repairs and to send the invoice to the landlords. A tenant does not have to make repairs to a rental unit and it is the landlords' responsibility to ensure that any repairs are carried out in a timely manner. Consequently, I find the tenants are entitled to some reduction in their rent over the 12 months of their tenancy. However, I find the tenants' claim for 20 percent to be extreme as the tenants did have the use of another shower and I am uncertain that the window repair would result in a high increase in Hydro as the tenants have provided no evidence to show this.

The tenants have also stated that there tenancy was devalued due to disturbances from the landlord yelling at the tenant below. The landlord agrees he did get into arguments with this other tenant but has testified that these were not serious. In this matter the tenants have the burden of proof that these arguments were frequent enough to disturb the tenants on a regular basis. I find the tenants have not met that burden of proof to show how frequent the arguments were. I therefore limit the tenants claim for a rent reduction to \$100.00 per month for 12 months to the total sum of **\$1,200.00**.

As the tenants have been partially successful with their claim I award the tenants their **\$50.00** filing fee.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,250.00**. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants' application is dismissed without leave to reapply.

The landlords' application is 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: October 04, 2013

Residential Tenancy Branch

