



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, OPR, CNL, FF, MNDC, O, RR, SS

Introduction

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

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$1800.00, and a request for recovery of the \$50.00 filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy given for landlord use, to cancel a Notice to End Tenancy for unpaid rent, and a request for a Monetary Order for \$3400.00.

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.

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

By the date of the hearing the tenants had already vacated the rental unit, and therefore the only issues left to deal with were the requests for Monetary Orders from both parties.

Background and Evidence

The landlords testified that:

- This tenancy began on October 1, 2012 with the monthly rent of \$900.00.
- The tenants failed to pay the September 2013 rent, and therefore on September 3, 2013 the tenants were served with a 10 day Notice to End Tenancy.
- The tenants failed to comply with that notice, and failed to vacate the unit until October 8, 2012.
- They are therefore requesting a Monetary Order for the outstanding September 2013 rent and for the lost rental revenue for the month of October 2013.

The tenants testified that:

- They had been attempting to get the landlord to do repairs, and the landlord had failed to do so, and therefore they withheld the September 2013 rent.
- They read the information provided by the Residential Tenancy Branch and they believed that it was their right to withhold the rent if the landlord failed to do repairs.

- The real reason the landlord wanted them to move is because the landlords are selling the place and therefore they believe they should get moving costs and one month's compensation as required by the Residential Tenancy Act.
- They also do not believe that they should have to pay the full October 2013 rent because when they were in the process of moving, the landlord's change the locks in the rental property.
- They are therefore asking that the landlord's application be dismissed and that the landlords be required to pay them a total of \$3400.00 for moving costs, and last month's rent.

Analysis

It's my finding that the tenants did not have the right to withhold the September 2013 rent in an attempt to have the landlord do repairs, and in doing so they put their tenancy in jeopardy.

It is also my finding that the tenants were illegally evicted with a 10 day Notice to End Tenancy as allowed by the Residential Tenancy Act when the tenants failed to pay the rent.

Therefore, since the tenants were evicted by a 10 day Notice to End Tenancy for nonpayment of rent, and not by a two month notice for landlord use, there is no requirement for the landlord to pay any compensation to the tenants.

Therefore I will not allow any of the tenants claim for compensation. The tenants had requested \$2500.00 for moving expenses, and \$900.00 last month rent. That full amount is denied.

The tenants also claim that they were locked out of the rental unit, however in the tenants own testimony they stated that they were in the process of moving and had moved the majority of their belongings, and therefore I find that it's likely that the

landlords simply thought the tenants had vacated the rental unit when a change the locks.

I will allow the landlords claim for the outstanding rent for September 2013, as the tenants lived in the rental unit for the full month of September 2013.

I will also allow the landlords claim for loss rental revenue for the month of October 2013, as the tenants had not fully vacated the rental unit until October 8, 2013, and I find it very unlikely that the landlords will be able to re-rent the unit in the month of October 2013. I will not reduce the amount just because the landlords change the locks, and in fact had they not change the locks the tenants may have been in the rental unit even longer, making it even more unlikely that the unit would re-rent.

I also allow the landlords request for recovery of their \$50.00 filing fee

Conclusion

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

I have allowed the landlords full monetary claim of \$1850.00 and I've issued a Monetary Order in that amount.

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

