



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession for non payment of rent;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a notice to end tenancy for unpaid rent, issued on January 5, 2014;
2. For money owed or compensation under the Act;
3. To make emergency repairs for health and safety reasons;
4. To make repairs to the unit;
5. Suspend or set conditions on the landlord's right to enter;
6. To provide services or facilities required by law; and
7. To recover the cost of filing the application.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' application to set aside the Notice to End Tenancy and the landlord's application for an order of possession and a monetary order for unpaid rent. The balance of the tenants' application is dismissed, with leave to reapply.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary matter

The style of cause in the landlord's application has been amended to reflect the proper spelling of the tenants' names.

Issues to be Decided

Should the notice to end tenancy for nonpayment of rent be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The parties agreed that the tenancy began in May 2013. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenants.

The tenants acknowledged that they were served with a notice to end tenancy for non-payment of rent on January 5, 2014. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The tenants acknowledged they did not pay rent as they withheld rent as they believed the landlord violated the tenancy agreement by failing to have the heating system repaired.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

Under 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.

The tenants did not pay rent owed for January, as they felt they were justified because they alleged the landlord failed to make a repair. However, the tenant did not have the authority under the Act, such as an order from an arbitrator to deduct any portion of rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act when

they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord.

While the tenants apply to dispute the Notice within the statutory timeline, I find the tenants' application to cancel the notice had no merit as they admitted rent was not paid when they received the notice and they did not pay the rent within five days. Therefore, I find the notice to end tenancy issued on January 5, 2014, is a valid notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of **\$1,250.00** comprised of unpaid rent for January 2014 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$600.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$650.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

As the tenants were not successful with their application they are not entitled to recover the cost of the filing fee from the landlord.

Conclusion

The tenants' application to cancel the notice to end tenancy is dismissed without leave to reapply; the balance of the tenants' application is dismissed with leave to reapply.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: January 29, 2014

Residential Tenancy Branch

