



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF, MNR O, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. 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 \$900.00, 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 that was given for nonpayment of rent, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary 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

The issues are, whether or not to uphold or cancel a Notice to End Tenancy that was given for nonpayment of rent, and whether or not to issue a Monetary Order to the landlords in the amount of \$900.00.

Background and Evidence

This tenancy began on August 15, 2012 with a monthly rent of \$900.00.

The tenant did not pay rent for the month of November 2013, and on November 3, 2013 the landlord served him with a 10 day Notice to End Tenancy.

The landlord testified that:

- The tenants are refusing to pay the November 2013 rent, claiming that we are required to give them one month compensation.
- As a result of the refusal to pay the rent we served the tenant with a 10 day Notice to End Tenancy, and are requesting that that notice be upheld.
- We're requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding November 2013 rent, and for our filing fee.

The tenant testified that:

- The landlord verbally gave him a two month Notice to End Tenancy, stating that they needing to renovate the rental unit.
- I accepted that notice, and notified the landlord in writing that I would be vacating the rental unit by December 1.
- The landlord's son responded in writing to the notice, stating that that was fine and he would arrange return of the security deposit.

- They therefore believe that since he was given the two month Notice to End Tenancy, he had the right to compensation equal to the equivalent of one month rent, and therefore he withheld the rent for the month of November 2013.
- He therefore requests that the Notice to End Tenancy be canceled, and that his filing fee be ordered returned.

In response to the tenant's testimony the landlord testified that:

- They did give the tenant verbal notice that they wanted him to vacate the rental unit so that they can do renovations required by the city, however they never gave any actual written notice to end the tenancy, nor did they specifically state that the tenants had to be out in two months.
- They do not dispute that there was written notice from the tenants that they were going to vacate the suite by December 1, or that the landlords son stated that that would be fine.

Analysis

It's my finding that although the landlords did not give the tenant a Notice to End Tenancy in the required form, they both verbally notified the tenant that he was required to move due to the need for renovations, and confirmed in writing that notice had been given.

Tenants are not required to vacate unless they receive a Notice to End Tenancy in the required form, however if that notice is given incorrectly and the tenants accept the notice, the landlords are bound by that notice.

It's my finding therefore that the landlords are required to pay compensation equivalent to one months rent for having given a Notice to End Tenancy for renovations and therefore the tenant did have the right to withhold his last month's rent to satisfy that compensation.

Conclusion

Landlord's application

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

Tenant's application

The Notice to End Tenancy dated November 3, 2013 is hereby canceled and I have issued an Order for the landlords to pay \$50.00 to the tenant to cover the cost of his filing fee.

I have removed the second tenant/applicant (initials J.B.) from the order issued, as there was never any landlord tenant relationship between the second applicant and the landlord.

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: November 28, 2013

Residential Tenancy Branch