



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim; and (b) an application by the tenants for an order of possession, an order that the landlord comply with the Act and a monetary order. Both parties have requested recovery of the filing fee from each other. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on January 24, 2011. The rent is \$850 due in advance on the first day of each month. A security deposit of \$425 was paid at the start of the tenancy.

Beginning in October 2013 the tenants stopped paying the rent. The reason given by the tenants for doing this was that they were having financial difficulties at that time. The tenants also claim that they had been complaining for a while that the washer and drier in the unit were not working properly. The landlord testified that when the rent was not paid, repeated attempts were made to contact the tenants to find out what was going on. Apparently the tenants did not return any of the landlord's calls and for whatever reason, the landlord allowed the situation to continue for some months before seeking advice from the Residential Tenancy Branch on January 24, 2014 about how to handle the situation. The landlord was advised by the RTB to serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord then attempted to follow the advice given by the RTB but made the mistake of serving the tenants with the wrong document. Instead of a 10 Day Notice the landlord gave the tenants a Proof of Service form. The landlord then also decided to

cancel the tenants' FOB for access to and from the building "*because she wanted to know if [the tenants] were still living in the apartment*". This action by the landlord got some action and an unknown lady called the landlord and asked her to reactivate the FOB. The landlord insisted on speaking to one of the tenants before she would reactivate it. Ultimately, on January 29th the male tenant picked up the landlord's call, told her he was driving and would call her back. He never called back. Again the landlord sought advice from the RTB on January 31st and was told to reactivate the FOB. The landlord did so, called the tenants to tell them it had been reactivated, and then went to the RTB on February 4th to file an Application for Dispute Resolution.

For their part, even though the wrong document was served on them and even though they were not paying rent and failing to answer the landlord's calls, the tenant filed their Application for Dispute Resolution on January 28, 2014.

As it stands now, the rent has not been paid since September. The current amount outstanding is \$4250.

Analysis

Landlord's Claim

The landlord has requested an order of possession and a monetary order. I shall deal with each of these requests in turn.

Order of Possession – As I explained to the parties at the hearing, I must dismiss the landlord's application for an order of possession on the basis that the wrong form was served on the tenants. The landlord will have to serve the tenants with the proper form before an order of possession can be issued.

Monetary Order – The landlord has claimed unpaid rent in the total amount of \$4250. The tenant has not disputed that this is the amount of rent owing. The Act and the tenancy agreement require that the tenant pay the rent when it is due. I am therefore satisfied that the landlord has established this claim.

Tenants' Claim

Order of Possession – The basis for the tenants' application in this regard was that they had been effectively shut out of the building due to the FOB being deactivated. The FOB was deactivated from January 24th to January 31st. The FOB is now working and the issue of the tenants' access to the unit or site is no longer in issue.

Order that the landlord comply – This part of the tenants' application is also related to the FOB deactivation. Again, this matter is no longer in issue.

Monetary Order – The tenants have claimed \$2500 in damages as compensation for the inconvenience and embarrassment they suffered as a result of the FOB being deactivated. I find the amount claimed to be unreasonable given the whole of the circumstances surrounding the FOB being deactivated. However, because the landlord was not entitled by law to deactivate the FOB despite the rent not being paid for MONTHS, I find that the tenants are entitled to a payment of \$100 by the landlord for the inconvenience this deactivation caused them.

Conclusion

I have found that the landlord has established a monetary claim in the amount of \$4250. I am also satisfied that the landlord is entitled to recover the \$50 filing fee for this application.

I have found that the tenants have established a monetary claim in the amount of \$100. I dismiss the tenants' request to recover the filing fee from the landlord.

In sum, the balance owing to the landlord by the tenants is \$4200. I therefore order that the landlord retain the deposit of \$425 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3775. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: February 17, 2014

Residential Tenancy Branch

