



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

Dispute Codes MT, CNL, MNDC, RR, OPL, FF, MNR

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 two-month Notice to End Tenancy that was given for landlord use, a request for a Monetary Order for outstanding rent for the months of January 2014, February 2014, and a request for recovery of the \$50.00 filing fee.

The tenants application is a request to cancel a Notice to End Tenancy that was given for landlord use, a request to allow the tenant more time to make an application to cancel a Notice to End Tenancy, a request for a Monetary Order for \$6000.00, and request to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing, however a large portion of the tenant's evidence package, relating to their monetary claim, has not been received at this point, and therefore the monetary portion of the tenants application will be adjourned and heard on a different date.

I therefore only proceeded with the landlord's application, and the tenant's request to cancel the Notice to End Tenancy.

I 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 two-month Notice to End Tenancy, and whether or not there is rent outstanding for the months of January 2014 and February 2014.

Background and Evidence

The parties all agree on October 12, 2013 the landlord served the tenants with a two-month Notice to End Tenancy that stated, "*The rental unit will be occupied by the landlord or the landlord spouse or a close family member of the landlord or the landlord spouse*".

The landlord testified that:

- The tenants admitted to having received the two-month Notice to End Tenancy; however they failed to dispute that notice within the 15 day time limit.
- The notice was served on October 12, 2013, and the end of tenancy date was December 31, 2013, however the tenants are still in the rental unit.
- She did not charge the tenants any rent for the month of November 2013 as compensation for inconvenience caused by work being done in the rental property.
- The tenants were not charged any rent for the month of December 2013 as this is the compensation required when a two-month Notice to End Tenancy is given.
- The tenants however have not paid any rent for the month of January 2014, for the month of February 2014.
- She is therefore requesting an Order of Possession for soon as possible, and a Monetary Order for the outstanding rent plus her filing fee.

The tenants testified that:

- They did receive the Notice to End Tenancy on October 12, 2013 and had found a place to move to, however the landlord would not return rent that they believe they had overpaid and therefore they could not afford to move and lost the place.
- They have been unable to afford to move out of the rental unit, and therefore are still in the rental unit.
- They have not paid February 2014 rent, however they did put an envelope with the full amount of rent, in cash, in the landlord's mailbox, and they witnessed her boyfriend remove that envelope from the mailbox.

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

- The tenants did not leave an envelope with cash in her mailbox, and her boyfriend at no time removed an envelope with cash from her mailbox.
- Further she fails to see why the tenants would have put the rent into her mailbox, as this has never been the method of paying the rent.
- The tenants also made no mention of having left the rent in her mailbox, until just recently as the dispute hearing drew close.
- The full January 2014 rent is still outstanding.

Analysis

First of all it's my decision that I will not allow the tenants request for more time to make an application to cancel the Notice to End Tenancy. The Section 49 of the Residential

Tenancy Act requires that the tenants apply within 15 days of receiving the notice, and in this case the tenants failed to apply and tell more than two months after receiving the notice.

Therefore pursuant to section 49(9) it is also my finding that the tenants are conclusively presumed to have accepted the end of the tenancy and I will not set the Notice to End Tenancy aside.

The landlord therefore does have the right to an Order of Possession.

It's also my finding that the tenants have not met the burden of proving their claim that they paid the January 2014 rent.

The burden of proving a claim lies with the person making the claim and when it is just the tenant's word against that of the landlord that burden of proof is not met.

I therefore also allow the landlords claim for outstanding rent for the months of January 2014, and February 2014 for a total of \$2120.00.

I also order recovery of the landlord's \$50.00 filing fee.

Conclusion

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable five days after service on the tenant's.

I have issued an Order for the tenant's to pay \$2170.00 to the landlord.

As stated above the tenants application for a monetary claim is adjourned and will be dealt with in the future hearing.

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 12, 2014

Residential Tenancy Branch

