



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction:

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. The Landlord withdrew the claim for unpaid rent, as the rent for February and March has been paid in full.

The female Landlord stated that on February 20, 2014 the Landlord's Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord wishes to rely upon as evidence were personally served to the female Tenant. The female Tenant stated that she received these documents on, or about, February 25, 2014. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to cancel a Notice to End Tenancy for Unpaid Rent, a monetary Order for money owed or compensation for damage or loss, for authority to reduce the rent, for an Order requiring the Landlord to make repairs to the rental unit, and to recover the fee for filing an Application for Dispute Resolution. At the outset of the hearing the Tenant withdrew the application to cancel a Notice to End Tenancy for Unpaid Rent and the application for an Order requiring the Landlord to make repairs to the rental unit, as the rental unit has been vacated.

The female Tenant stated that on February 26, 2014 the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon as evidence were personally served to the both Landlords. The female Landlord stated that she received these documents on February 25, 2014. As the Landlord acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted 14 pages of evidence to the Residential Tenancy Branch on April 01, 2014 and that some of those pages were personally served to the female Tenant on April 04, 2014. The Tenant acknowledged receiving 7 pages of evidence on April 04, 2014 and they were accepted as evidence for these proceedings.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and is the Tenant entitled to compensation, in the form of a rent reduction or a monetary Order, for a pest infestation?

Background and Evidence:

The Landlord and the Tenant agree that this tenancy began in December of 2013.

The female Tenant stated that the rental unit was vacated on April 06, 2014, although the Tenant has not yet returned the keys and did not previously inform the Landlord that the rental unit had been vacated. The female Landlord stated that this is the first time the Tenant informed the Landlord that the unit had been vacated.

The Landlord and the Tenant agree that on February 11, 2014 the female Tenant was personally served with an unsigned Ten Day Notice to End Tenancy for Unpaid Rent, which was submitted by the Tenant as evidence for these proceedings.

The Landlord and the Tenant agree that when the Ten Day Notice to End Tenancy was served, the rent for February was outstanding. The parties agree that rent for February was paid on February 25, 2014. The parties agree that rent was paid for March of 2014 and that no rent was paid for April of 2014.

The female Tenant stated that sometime in the middle of December they observed mice droppings at various locations in the rental unit and that they reported the problem to the Landlord shortly thereafter. The Tenant stated that they did not observe any mice and they did not report that any of their belongings were damaged by the mice.

The female Landlord stated that the problem with mice was not reported to the Landlord until February 26, 2014.

The female Tenant stated that she has a letter from the Landlord, dated February 10, 2014, in which the Landlord declared that a pest control company would be inspecting the rental unit. The letter was not submitted in evidence. The female Landlord denied serving the Tenant with this document.

The Landlord and the Tenant agree that a pest control company inspected the rental unit on March 03, 2014 and March 18, 2014. The Tenant acknowledged that they have been served with documentation from the pest control company, which indicates no new activity was detected when the unit was inspected on March 18, 2014.

The female Landlord stated that after the first pest control inspection they hired a contractor to fill holes in various locations of the rental unit in an attempt to prevent mice from entering the unit. The Tenant acknowledged that they have been served with an invoice for these repairs.

Analysis

On the basis of the undisputed evidence, I find that the Tenant did not pay rent when it was due in February of 2014, and that an unsigned Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Residential Tenancy Act (Act)* was received by the Tenant on February 11, 2014.

Section 46(2) of the *Act* stipulates that a notice to end tenancy served under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice. In the circumstances before me I find that the Landlord did not sign the Ten Day Notice to End Tenancy that was received by the Tenant on February 11, 2014. I therefore find that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*.

As the unsigned Notice to End Tenancy was not effective, I dismiss the Landlord's application for an Order of Possession. I note that it would be reasonable for the Landlord to conclude that the rental unit has been vacated, given the information provided by the female Tenant at this hearing. Given that the rental unit has been vacated, I find that the Landlord does not need an Order of Possession to regain lawful possession of the rental unit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

In regards to the claim for compensation for a mice infestation, the burden of proving the claim rests with the Tenant. I find that the Tenant submitted insufficient evidence to show that the problem with mice was reported prior to February 26, 2014. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's claim that it was reported in December of 2013 or that refutes the female Landlord's testimony that it was not reported prior to February 26, 2014. On the basis

of the female Landlord's testimony, I find that the problem had been reported by February 26, 2014.

In determining this matter I have placed no weight on the female Tenant's testimony that the Landlord discusses pest control in a document dated February 10, 2014, as the Tenant did not submit a copy of the document and the Landlord denies the existence of the document.

Residential Tenancy Branch policy guidelines suggest that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Policy guidelines further suggest that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's responsibility to maintain the premises, but they stipulate that a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations. I concur with these guidelines.

I find that the Landlord made a reasonable effort to address the pest problem in a timely manner. In spite of those reasonable efforts, I find that the presence of mice did interfere with the Tenant's quiet enjoyment of the rental unit. I therefore find that the Tenant is entitled to compensation of \$100.00, which I find to be reasonable compensation for living with mice for the short period of time between the time the problem was reported and the time the problem was rectified.

In determining the amount of this award, I was heavily influenced by the absence of evidence that shows this infestation was significant; by the fact that the Tenant did not experience the discomfort of encountering a mouse; and that the Tenant did not report any damage to personal property. This compensation simply reflects the general discomfort an average person would experience knowing there is mice in their home.

Although the Landlord's application for an Order of Possession has been dismissed, I find that the Landlord's Application for Dispute Resolution has merit. In reaching this conclusion I was influenced by the fact that the rent had not been paid when the Landlord filed the Landlord's Application for Dispute Resolution and that filing the Application was, therefore, reasonable.

I find that the Tenant's Application for Dispute Resolution has merit. As the Application for Dispute Resolution filed by each party has merit, I find that each party is responsible for the cost of filing their own Application for Dispute Resolution.

Conclusion

I authorize the Tenant to withhold rent for April, in the amount of \$100.00, in full satisfaction of the award for loss of quiet enjoyment of the rental unit. I note that the Tenant did not vacate the rental unit until April 06, 2014; the Tenant is obligated to pay rent for all the days the Tenant remained in possession of the rental unit; and that \$135.00 is the equivalent of 6 days rent.

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: April 10, 2014

Residential Tenancy Branch