



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LLA Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF, CNR, MT, RP, RR

Introduction

This hearing was scheduled to deal with an application by the landlord for an order of possession and a monetary order for unpaid rent and to recover the RTB filing fee. When the hearing commenced, the tenant advised that he had filed an application to cancel a notice to end tenancy for unpaid rent, to extend time to make the application, and for orders for a rent reduction and for the landlord to make repairs.

Both the landlord and tenant attended the teleconference hearing and gave evidence.

Issue(s) to be Decided

Is the tenant entitled to more time to make an application to cancel the notice to end tenancy?

If so, should the notice to end tenancy be cancelled?

If the notice should be cancelled, is the tenant entitled to an order for a rent reduction?

If the notice should be cancelled, is the tenant entitled to an order that the landlord make repairs?

If the tenant is not entitled to more time to make an application, is the landlord entitled to an order of possession?

If the tenant is not entitled to more time to make an application, is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord gave evidence that the tenancy started on March 1, 2014 and the tenants were obligated to pay \$750.00 rent monthly in advance on the first day of the month. The tenants also paid a security deposit of \$375.00.

The landlord gave evidence that he served the tenants with a Notice to End Tenancy for Unpaid Rent (the "Notice") by posting the Notice on the tenants' door on April 2, 2014. The Notice states the tenants failed to pay rent of \$750.00 that was due on April 1, 2014. The landlord gave evidence that the tenants have not made any further rent payments.

The tenant gave evidence that they filed an Application for Dispute Resolution on April 24, 2014 to dispute the Notice and make other claims. Asked whether there were any extenuating circumstances that prevented the tenants from filing their Application earlier, the tenant said there were not.

The landlord's position is that he is willing to forego a monetary order for monies owed by the tenant over the amount of the security deposit. The landlord wishes to retain the security deposit in partial satisfaction of unpaid rent.

The landlord requests an order of possession effective at 1 p.m. on May 10, 2014, in order to give the tenants some time to find new accommodation.

Analysis

I find the tenants received the Notice on April 2, 2014. According to Section 46(4) of the Act, a tenant may dispute a notice to end tenancy for unpaid rent by making an application for dispute resolution within five days after receiving the notice. In this case, the tenants' deadline for making an application was April 7, 2014. The tenants made their application on April 24, 2014.

Section 66 allows an arbitrator to extend a time limit in some circumstances:

- (1) The director may extend a time limit established by the Act only in exceptional circumstances, other than as provided by section 59(3) or 81(4).
- (2) Despite subsection (1), the director may extend the time limit established by section 46(4)(a) for a tenant to pay overdue rent only in one of the following circumstances:
 - (a) the extension is agreed to by the landlord;
 - (b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

In this case, the tenant's evidence is that there were no exceptional circumstances. As well, the landlord did not agree to an extension of time and there was no evidence that

emergency repairs were made. For these reasons, I am unable to extend the time limit for the tenants to apply to dispute the Notice. The tenants' application for an extension of time and to cancel the Notice is dismissed.

Since the tenant's application to cancel the Notice is dismissed, the landlord is entitled to an order of possession. I grant the landlord an order of possession effective at 1 p.m. on May 10, 2014 which must be served on the tenants. Should the tenants fail to comply with the order, it may be filed for enforcement in the Supreme Court.

Since the tenancy is coming to an end, the tenant agrees there is no point proceeding with their claims for a rent reduction or an order that the landlord make repairs. These claims are withdrawn and the dispute resolution hearing scheduled for June 16, 2014 to deal with the tenants' Application will not proceed.

The tenants agree they continue to occupy the rental unit and have not paid rent for April 2014. Accordingly, the landlord is entitled to a monetary order to recover April 2014 rent of \$750.00 and his RTB filing fee of \$50.00. The total amount due the landlord is \$800.00. I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of this claim. The landlord has declined a monetary order for the balance of the amount due the landlord.

Conclusion

I grant the landlord an order of possession. The landlord may retain the security deposit.

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 30, 2014

Residential Tenancy Branch

