



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, FF, LAT, MT, O, OPT, RR, MNR, MNDC, MNSD, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the applicants have put on the applications. For claims to be combined on an application they must related.

Not all the claims on these applications are sufficiently related to the main issues to be dealt with together.

I therefore will deal with the landlords request for an Order of Possession and a request for a Monetary Order for outstanding rent, and I will deal with the tenants request to cancel a Notice To End Tenancy and the dispute of an additional rent increase. I dismiss the remaining claims with liberty to re-apply.

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

1. Whether or not to uphold or cancel a Notice To End Tenancy.
2. Whether or not to issue a Monetary Order to the landlord.
3. Whether or not the landlord has given an illegal rent increase.
4. Whether or not to issue an Order of Possession to the landlord.

Background and Evidence

The landlord testified that:

- This tenancy began on February 1, 2012 with the monthly rent of \$2200.00 and a combined security/pet deposit of \$1300.00 was collected.
- The tenants were in a fixed term tenancy that required that the tenants vacate at the end of the tenancy on January 31, 2014.
- On January 30, 2014 she signed a new fixed term tenancy with the tenants at a monthly rent of \$2250.00.
- By March 2014, the tenants had fallen substantially behind on the rent and therefore on March 8, 2014 the tenants were personally served with a 10 day Notice To End Tenancy.
- The tenants have failed to comply with that notice, and as of today's date there is a total of \$9200.00 in rent outstanding.
- She is therefore requesting an Order of Possession for May 31, 2014 and is requesting a Monetary Order for the outstanding rent.

The tenants testified that:

- They do not dispute that at this time there is a total of \$9200.00 in outstanding rent, however they believe that a portion of that rent is due to an illegal rent increase.
- Further, they have withheld the rent because the landlord has failed to do requested repairs to the rental unit.
- They therefore request that the Notice To End Tenancy be canceled and that this tenancy be allowed to continue.
- They have a verbal agreement with the landlord allowing them to make payments on the outstanding rent, and allowing the tenancy to continue.

The landlord further testified that:

- They had discussions about allowing the tenant to make payments, however no firm agreement was ever reached and she did not agree to allow the tenancy to continue.
- Further, at no time did the tenants inform her that they were withholding rent because of needed repairs, she was informed that the rent was not paid because Canada Revenue Agency had put a hold on their bank account.

Analysis

The tenant does not have the right to unilaterally withhold the rent in an attempt to pressure the landlord to do repairs to a rental property. Before withholding any rent a tenant would be required to get an Order from an arbitrator with the Residential Tenancy Branch allowing them to do so.

In this case the tenants did not get an Order from an arbitrator allowing them to withhold any rent and therefore they did not have the right to do so.

I therefore will not be canceling the Notice To End Tenancy, and this tenancy ends pursuant to that notice. The landlord is requesting an Order of Possession for May 31, 2014 and therefore I will be issuing an Order for that date.

Further, it is my finding that there has not been an illegal rent increase. The tenants had signed a fixed term tenancy agreement that required that they vacate at the end of the term on January 31, 2014. Therefore technically their tenancy ended on January 31, 2014, and a new tenancy began, as a result of a new tenancy agreement, on February 1, 2014.

Since this was a new tenancy agreement there is no limit on how much rent is to be paid and in this case the parties agreed on rent of \$2250.00 per month.

As stated earlier the tenants did not have the right to withhold the rent and therefore I will be issuing an Order for the outstanding rent of \$9200.00.

I also allow the landlords request for recovery of her \$100.00 filing fee, the tenants request for recovery of the filing fee is dismissed.

Conclusion

Tenant's application

As stated above the tenant's application to cancel a Notice To End Tenancy and the tenants dispute of a rent increase and recovery of the filing fee are all dismissed.

The other claims on the tenant's application are dismissed with leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlord for 1:00 PM on May 31, 2014.

I have allowed the landlords full monetary claim of \$9300.00 and I therefore Order that the landlord may retain the full security/pet deposit of \$1300.00, and I've issued a Monetary Order in the amount of \$8000.00.

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: May 05, 2014

Residential Tenancy Branch

