



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, CNC, DRI, O

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed their Application requesting a monetary order for unpaid rent, for an order ending the tenancy due to unpaid rent, and to recover the filing fee for the Application.

The Tenants filed to dispute an additional rent increase, to cancel three Notices to End Tenancy (for unpaid rent, for cause, and for Landlord's use of the property), and for "other" relief as described below.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing the parties explained that the Tenants had already vacated the rental unit. Therefore, the portions of the Applications of the Landlord and the Tenants to deal with the Notices to end tenancy are no longer required and are dismissed.

The Tenants had marked the "other" box on their Application. The Tenants checked this box off as they wanted to request a monetary order for alleged overpayment of hydro bills; however, the Tenants did not provide an explanation in their Application that they were seeking a monetary order for this, nor did they supply evidence in support of this and further, they failed to indicate on the Application they were seeking a monetary

order for a specified amount. For these reasons, the Tenants' claim for overpayment of hydro bills is dismissed, with leave to reapply.

The Tenants failed to argue or submit any evidence on the issue of overpayment of rent, and this portion of their claim is also dismissed with leave to reapply.

Likewise, the Landlord sought to make a claim against the Tenants for alleged damages to the rental unit. Again, this was not sought in the Application of the Landlord and therefore, the issue of damages to the rental unit was not considered and the Landlord has leave to apply for this.

I note that the male Tenant began to lose his temper, use inappropriate language and behaved in a rude manner toward the end of the hearing. The male Tenant was cautioned about this behaviour.

Issue(s) to be Decided

Is the Landlord entitled to the rent sought?

Background and Evidence

This tenancy began on or about January 15, 2013, with the parties entering into a written, month to month tenancy agreement. The parties used a homemade tenancy agreement and the Landlord was cautioned regarding some of the terms in this agreement.

The Tenants paid a security deposit of \$375.00 on January 8, 2013, and the monthly rent was \$750.00, payable on the first day of each month.

In March of 2014, the Landlord issued the Tenants an invalid Notice to End Tenancy for cause. The Landlord had made up and written his own cause on the form that is supplied for such Notices. The Landlord testified he gave the Tenants the Notice to, "start a dialogue about ending the tenancy so he could do renovations on the rental unit."

It was apparent that the Landlord's inappropriate use of Notices to end the tenancy greatly aggravated the dispute between the parties.

I note that during the course of the hearing the Landlord did acknowledge he acted inappropriately in attempting to end the tenancy and in some of his other actions he made "poor choices". The Landlord was cautioned that he must educate himself about his rights and his obligations as a Landlord under the Act, and that he is **not** allowed to do whatever he pleases with his own property **when it is rented**. I also note that the Tenants have leave to make claims regarding the alleged Landlord's actions during the tenancy, if they so choose. Likewise the Landlord has leave to apply for alleged damages and cleaning at the rental unit, if he so chooses. As explained above, none of

these claims were in the Applications before me and therefore, I make no binding determinations on these issues.

The Tenants refused to pay rent for April and May of 2014. The Tenants believed they were entitled to one month of free rent as they argued the Landlord should have given them a two month Notice to End Tenancy as he wanted to do renovations. In fact, the Landlord did not issue a two month Notice to End Tenancy.

On April 2, 2014, the Landlord issued a 10 day Notice to End Tenancy for unpaid rent. The Tenants informed the Landlord they would not pay the rent.

The Landlord testified he thought the Tenants had vacated the rental unit on or about May 5, 2014, so he entered the rental unit and changed the locks on May 6, 2014. He testified he called the branch and they suggested if the rental unit was abandoned he could change the locks. He did not explain the entire situation to the person he was talking to, The Landlord testified he had a friend look at the rental unit with him and his friend agreed it looked abandoned.

The Tenants returned to the rental unit on May 7, 2014, to continue to move out and clean the rental unit, according to their testimony. When they found the rental unit locks had been changed, the male Tenant kicked in the back door and entered the rental unit.

When the Landlord arrived at the rental unit he and the male Tenant exchanged words and the police had to attend to keep the peace.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants breached section 26 of the Act by failing to pay the rent when due.

Section 26(1) of the Act states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Therefore, I find the Landlord is entitled to rent for the month of April, in the amount of **\$750.00**. I further find that the Tenants must pay the Landlord for use of the rental unit for five days in May of 2014. I find the Landlord ended the tenancy on May 6, by changing the locks and preventing them access to the rental unit. As the daily rent for May was \$24.19, I allow the Landlord **\$120.97** for five days.

Section 67 of the Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$920.97** comprised of \$870.97 and the \$50.00 fee paid by the Landlord for this application.

Pursuant to section 72 of the Act I order that the Landlord retain the security deposit of \$375.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$545.97**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

Both parties breached the Act in various ways. However, many of these claims were not before me and I have made no binding determinations on these issues.

The Tenants vacated the rental unit and the Landlord changed the locks on the rental unit before the hearing occurred, and despite both parties having filed Applications to deal with these serious issues.

Nonetheless, as to rent owed I find the Landlord has established a total entitlement to \$870.97 in unpaid rent and the \$50.00 filing fee for the Application, and I order he may keep the security deposit in partial satisfaction of the claim. He is granted a monetary order for the balance due of \$545.97.

Both parties are advised that it is their own responsibility to educate themselves on their rights and obligations under the Act.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 04, 2014

Residential Tenancy Branch

