



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application: CNR, RP, PSF, RR, FF

Landlord's Application: OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; orders for repairs; orders for the landlord to provide services or facilities; and, authorization to reduce future rent payable. The landlord applied for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; and, authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The female tenant called into the teleconference call to authorize the male tenant to represent her during the proceeding. The female tenant then exited the conference call. The hearing proceeded with the male tenant representing both tenants.

The landlord requested her application be amended to include unpaid rent for the months of December 2013, January 2014 and February 2014. The tenant stated rent had been paid for those months and had receipts to prove it but had not provided such evidence for this proceeding as he was unaware the landlord was claiming unpaid rent for those months. In keeping with the principles of natural justice and the Rules of Procedure, I declined to amend the landlord's application as the tenants had not been notified that such matters would be determined as part of this proceeding.

I did permit the landlord to amend her application to include unpaid rent for the month of April 2014 since the tenant acknowledged that rent was not paid for April 2014 yet the

tenants resided in the rental unit in April 2014 and the tenants still had the keys to the rental unit as of the time of this hearing.

As a result of a previous dispute resolution proceeding that took place on February 12, 2014, the landlord already has an Order of Possession that is effective at 1:00 p.m. on April 30, 2014. The tenant stated that the rental unit has been vacated and the tenant confirmed that he would return the keys to the landlord by meeting the landlord at the rental unit at noon on this date. The landlord agreed to meet the tenants at the rental unit at noon for purposes of conducting the move-out inspection and retrieving the keys from the tenants.

Since possession of the rental unit was to return to the landlord on the date of this hearing, I found it unnecessary to consider the tenants' request to cancel the 10 Day Notice issued on March 12, 2014 and the landlord request for an Order of Possession based upon that Notice. I also found it unnecessary to consider tenants' requests for repair orders, orders for the landlord to provide services or facilities, and the tenants' request to reduce future rent payable. As all of the issues identified on the tenants' Application are moot since the tenancy is set to end on the date of the hearing I dismissed the tenants' Application. In response, the tenant verbally requested that I consider awarding the tenants monetary compensation equivalent to 100% of the monthly rent if I would not consider the request for a rent reduction. I declined to amend the tenants' application to consider the tenant's verbal request for monetary compensation as the tenants had not indicated they were seeking a specific amount of compensation from the landlord in filing their Application for Dispute Resolution and because it would be contrary to the principles of natural justice to consider such a claim without prior notice to the landlord.

After hearing from both parties and giving my decision orally, a third party called into the hearing with the intention of providing witness testimony on behalf of the tenants. I declined to hear from the witness as I had already heard from the parties during the scheduled hearing time and made my decision.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent for the months of March and April 2014?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

Pursuant to the terms of tenancy, the tenants are required to pay rent of \$755.00 on the 1st day of every month. The tenants paid a security deposit of \$377.50.

The tenants did not pay rent for March 2014 and on March 12, 2014 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates rent of \$755.00 was outstanding as of March 1, 2014. The tenants filed to dispute the Notice.

Both parties referred to a previous dispute resolution proceeding and settlement agreement of February 12, 2014. Below, I have summarized the outcome of that proceeding.

On February 12, 2014 the parties participated in a dispute resolution hearing to deal with the tenants' requests for monetary compensation for issues related to lack of maintenance, orders for compliance, and orders for repairs. During that hearing the parties entered into a settlement agreement. One of the terms of the settlement agreement was that the tenancy would end April 30, 2014 and the landlord was provided an Order of Possession effective April 30, 2014. The settlement agreement also reflects that the landlord waived entitlement to rent that was outstanding for the month of November 2013 in settlement of "all issues arising out of the tenant's application".

On February 25, 2014 the tenant submitted a Request for Review Consideration of the decision dated February 12, 2014 on the basis it was obtained by fraud. The reviewing Arbitrator found the tenant did not provide sufficient evidence to show the settlement agreement was entered into based upon fraudulent evidence of the landlord.

On February 25, 2014 the tenant submit a Request for Correction claiming the settlement agreement recorded by the Arbitrator did not include terms for repairs to be made and authorization for the tenants to withhold rent. In response to the Request for Correction, the Arbitrator found that the terms of the settlement agreement that were recorded in the decision accurately reflected what the parties agreed upon during the hearing and that no correction was required. The Arbitrator also noted that the tenant was essentially attempting to revisit issues that the tenants did not pursue in the settlement agreement reached on February 12, 2014.

In the hearing before me, the tenant acknowledged that rent was not paid for March 2014 or April 2014. The tenant stated that they vacated the rental unit on April 18, 2014. The landlord stated that she was unaware the tenants had vacated the rental unit as she has not been notified of such and had not been provided the keys to the rental unit. The tenant acknowledged that they had not notified the landlord that they had moved out and that they still have the keys to the rental unit.

The tenant submitted that the reason rent was withheld on March 1, 2014 was because he was waiting for the responses to his Request for Review Consideration and Request for Correction. I noted that the decisions issued in response to those requests were issued on March 3, 2014 and March 12, 2014 respectively and that despite dismissal of the Request for Review and Request for Correction the tenants still did not pay rent.

The tenant responded by stating rent for March and April 2014 was not paid because repair issues remained outstanding and the rental unit was not provided sufficient heat. Further, the tenant asserted that due to mould in the rental unit the tenants had to vacate the rental unit on April 18, 2014.

The tenant pointed to a note written by a doctor on April 11, 2014 whereby the doctor states the tenant is suffering from respiratory symptoms due to exposure to mold in his apartment and that his environment needs to be renovated or the tenant would have to move.

I pointed out that the doctor does not indicate whether she had been to the rental unit or observed mould in the rental unit. The tenant claimed that his doctor had been in the rental unit.

The tenant acknowledged that the tenants had not made any emergency repairs and had not been authorized by the landlord to withhold rent. However, the tenant reiterated that the settlement agreement of February 12, 2014 should have included a term authorizing the tenants to withhold rent if repairs remained outstanding.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides very limited circumstances when a tenant may legally withhold rent; including: emergency repairs made by a tenant, or authorization to reduce rent was given by the landlord or an Arbitrator.

In the case before me, the tenants did not make emergency repairs and did not have authorization from the landlord to withhold rent. From reading the decision of February 12, 2014 and the decisions issued in response to the tenant's Request for Review and Request for Correction it is clear that the tenants did not have the authorization of an Arbitrator to withhold any amount from future rent payable. Therefore, I find the tenants were obligated under section 26 of the Act to pay the full amount of rent due for the months of March and April 2014.

For reasons given above, I find the landlord entitled to recover unpaid rent for the months of March and April 2014. My award to the landlord includes the full month of April 2014 despite the tenant's assertion that they already moved out of the rental unit because the tenants did not notify the landlord of moving out or return the keys to the landlord; thus, effectively remaining in possession of the rental unit. I also gave little weight to the doctor's note as a basis for ending the tenancy earlier as the doctor does not indicate in her letter that she ever attended the rental unit and observed mould in the rental unit.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Rent: March and April 2014 (\$755.00 x 2)	\$ 1,510.00
Filing fee	50.00
Less: security deposit	<u>(377.50)</u>
Monetary Order	\$ 1,182.50

To enforce the Monetary Order it must be served upon the tenants and the landlord may file it in Provincial Court (Small Claims) to enforce as an order of the court.

Conclusion

The tenancy ends as of 1:00 p.m. on this date; however, I do not provide the landlord with an Order of Possession as the landlord already has an Order of Possession from a previous dispute resolution proceeding that she may use as necessary to regain possession of the rental unit.

The landlord has been authorized to retain the tenants' security deposit and has been provided a Monetary Order for the balance of \$1,182.50 to serve and enforce as necessary.

The tenants' application was dismissed.

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

