



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords.

The landlords and the tenants all attended and each gave affirmed testimony. The tenants were also accompanied by a witness, who did not testify but remained in attendance for the entire hearing; one of the tenants advised that the witness is also a tenant but not named in the applications.

The parties also provided evidentiary material in advance of the hearing. No issues with respect to service or delivery of documents or evidence were raised.

The parties were warned several times, and placed in lecture mode several times during the course of the hearing for constant interruptions. The parties were given the opportunity to cross examine each other on the evidence and testimony provided wherever possible, all of which has been reviewed and is considered in this Decision. Due to the inability of the parties to refrain from interruptions and the constant problems encountered in the hearing, I declined to hear any further testimony from anyone, and the tenants' witness was not heard.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?

- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Should the notice to end tenancy for unpaid rent be cancelled?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that the landlords should be ordered to make repairs to the unit, site or property?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlords purchased the rental house in 1991 which was tenanted with more than one rental unit. When one unit became vacant, the tenants wanted to take over the entire house. The landlords testified that the rent for the upstairs unit was \$900.00 per month and the lower unit was always \$650.00 per month, so the landlords expected monthly rent of \$1,550.00. No written tenancy agreement exists.

The tenants paid rent in the amount of \$1,350.00 in October, 2013, for the tenancy now consisting of both units commencing November 1, 2013. The first landlord testified that the tenants advised they would pay the balance later. The tenants continued to fall into arrears and the landlords served one of the tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. A copy of the notice has been provided, and it is dated June 6, 2014 and contains an expected date of vacancy of June 16, 2014. It states that the tenants failed to pay rent in the amount of \$3,680.00 that was due on June 1, 2014. The landlord testified that of that amount, \$2,130.00 was for rental arrears from November, 2013 to May, 2014. The tenants made partial payments only for those months, and paid \$1,100.00 in June, 2014 for which the landlords issued a receipt that is marked, "For Use and Occupancy Only." A copy of the receipt has not been provided.

The details section of the landlords' application states that the tenants owed \$2,130.00 to the end of May, 2014, and then made a partial payment of \$1,100.00 for June's rent on June 6, 2014, leaving a further outstanding amount of \$450.00, and no rent has been received for July, 2014.

The landlords claim \$4,130.00 for unpaid rent to the end of July, 2014 in addition to loss of revenue in the amount of \$1,550.00 for the month of August, 2014.

The landlord also testified that the tenants have complained about repairs required to the rental unit and the landlord denies that the photographs provided by the tenants are an accurate depiction of the rental unit. She further testified that any damage to the rental unit was caused by the tenants. The rental unit has been rented by the tenants for almost 30 years. The tenants are paying lower than market rent and the landlords have only raised the rent twice in that time. The landlords told the tenants that if they

paid the rent the landlords would make repairs, but they are never satisfied. If they don't like it, they should move out. Also, the tenants only ask for repairs to be made when rent is due.

The landlord also testified that the parties had been before an Arbitrator in May, 2014. The result of that hearing was a dismissal, with leave to reapply. The landlords had applied for an Order of Possession and a monetary order for unpaid rent or utilities. The tenants also made an application disputing an additional rent increase, for an order that the landlords comply with the *Act*, and for an order reducing rent for required repairs. The tenants' application was treated as abandoned, and the landlords' application for a monetary order was dismissed with leave to reapply, and the application for an Order of Possession was dismissed, because the director found that the landlords had failed to provide a copy of the notice to end tenancy and had thereby failed to prove that the tenants were served with a notice that was issued in accordance with the *Act*.

The first tenant testified that she moved into one of the rental units in the building in 2005 and became a tenant of the entire house in October, 2013. In October, 2013 she paid the landlords \$1,350.00 for November's rent and the landlord said she wanted \$1,550.00. Then in December, the tenant paid \$1,300.00 and on February 27, 2014 \$975.00. The tenant testified that the only month that no rent was paid was July, 2014.

The tenant also spoke about repairs being required in the rental unit, and provided a document setting out plumbing issues, black mold, electrical issues, peeling wallpaper, holes in the flooring, and a compromised structure of the building.

The other tenant testified that the landlords have made promises to do repairs, but none have been done.

Analysis

Where a tenant disputes a notice to end a tenancy issued by the landlord, the onus is on the landlord to prove the validity of the notice, which may include the reasons for issuing it. In this case, the landlord testified that one of the tenants was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 6, 2014, which is not disputed by the tenants. The notice is dated June 6, 2014 and contains an expected date of vacancy of June 16, 2014 and states that the tenants failed to pay rent in the amount of \$3,680.00 that was due on June 1, 2014.

The landlord also testified that rent for the lower unit was always \$650.00 per month and the tenants did not dispute that. The landlord also testified that the upper unit was \$900.00 per month. The tenants dispute the amount of rent payable, but neither of the tenants provided any testimony about what exactly the amount of rent was, and the parties agree there is no written tenancy agreement. The tenants paid \$1,350.00 for the first month and the landlord testified that the tenants promised to pay the remainder at a later date. The tenant was not able to provide me with any testimony of what amount

was agreed to but testified that the landlord wanted more than the \$1,350.00 and the house is in bad need of repair. The only month that the tenants did not pay any rent was July, 2014.

The tenants have applied for an order reducing rent for repairs, services or facilities agreed upon but not provided, but were not able to say from what amount to what amount.

The tenants, or some of them, have resided in the rental building since 1991, and no one disputes that the lower level was always \$650.00 per month.

In the circumstances, I find that rent was \$1,550.00 per month, but the tenants didn't want to pay that much. Rather than negotiating a lower amount with the landlords, the tenants simply paid what they thought the rental unit was worth. One of the tenants testified that they paid the landlords \$1,350.00 for November, 2013, then \$1,300.00 in December. I find that the tenants have been in arrears of rent continuously since November, 2013.

The tenants have also applied for an order reducing rent for repairs, services or facilities agreed upon but not provided, but have not provided me with sufficient evidence of what that should be, and I dismiss that portion of the tenant's application. Similarly, I find that the tenants have failed to establish a monetary claim as against the landlords, and I dismiss that portion of the tenants' application.

I have reviewed the notice and find that it is in the approved form and that it contains information required by the *Act*. The tenants have not satisfied me that rent should be reduced or that the tenants were entitled under the *Act* to withhold any amount of rent. The *Act* states that a tenant must pay rent even if the landlord fails to comply with the *Act* and a tenant may only withhold rent in certain circumstances, such as an overpayment of a security deposit. I find that the landlords are entitled under the *Act* to an Order of Possession for unpaid rent, and the tenants' application for an order cancelling the notice to end tenancy is hereby dismissed.

I further find that the landlords have established a monetary claim as against the tenants in the amount of \$4,130.00 for unpaid rent from November, 2013 to July, 2014. With respect to the landlords' application for loss of revenue for the month of August, 2014, I am not satisfied that the landlords have established that the rental unit would be suitable to be re-rented or that any inability to re-rent would be entirely caused by the tenants, and the landlords' application for loss of revenue for August, 2014 is hereby dismissed without leave to reapply.

Since the tenancy is ending, I decline to order the landlords to make repairs to the unit, site or property.

Since the landlords have been partially successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an order of possession in favour of the landlords on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,180.00.

This order is final and binding and may be enforced.

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: August 08, 2014

Residential Tenancy Branch

