



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF, O
CNC, CNR, MNDC, OLC, LAT, RR, DRI, O

Introduction

This hearing was convened by way of conference call in response to an Application for dispute Resolution (the “Application”) made by the Landlord for an Order of Possession for unpaid rent or utilities. The Landlord also applied for a Monetary Order for unpaid rent, to keep the Tenants’ security and pet damage deposits, to recover the filing fee, and for ‘Other’ issues. The Tenants applied for the following issues:

- To cancel the notice to end tenancy for cause and unpaid rent or utilities
- For money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement;
- To authorise the Tenants to change the locks to the rental unit
- Allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided
- For the Landlord to comply with the Act, regulation or tenancy agreement
- To dispute an additional rent increase
- For ‘Other’ issues

The Landlord and two of the Tenants named on the Landlord’s Application appeared for the hearing and no issues in relation to the service of the Applications and Notice of Hearing documents to each other were raised by the parties.

Preliminary Matters

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single application.

As a result, I have determined that I will not deal with all the dispute issues placed on the Tenants’ Application in this hearing. Not all the claims are sufficiently related to the

main issue of whether or not the tenancy will continue. Therefore, I will deal with the requests to either uphold or set aside the notice to end tenancy for unpaid rent or utilities; the notice to end tenancy for cause; the Landlord's request for a Monetary Order for unpaid rent and to keep the Tenants' deposits. However, the Tenants are given leave to re-apply for the claims not dealt with in this Decision as detailed below.

The parties disagreed with each other on the service of certain portions of the documentary evidence submitted for their Applications. However, I continued the hearing utilising written evidence which had been provided to each party before the hearing; for example, the notices to end tenancy. The parties were informed that if the other party refers to written evidence which they have not received a copy of then it should be pointed out during the hearing at which point the issue of whether it would be allowed would be considered at that time.

The Landlord also indicated during the hearing that he was claiming for unpaid rent for the months of August and September, 2014 as these amounts had not been paid. The Landlord had indicated on the details section of his Application that he intended to claim for anticipated rent for these months. As a result, I amended the Landlord's Application in relation to the monetary amount sought, pursuant to Section 64(3) (c) of the Act.

At the start of the hearing, the Tenants indicated that only one of the Co-Tenants was now residing in the rental suite and was intending on vacating the rental suite at the end of September, 2014.

The Landlord and Tenants had a discussion around this move out date and the Landlord was agreeable to the rental suite being vacated on this date and the Landlord being issued with an Order of Possession effective for the end of September, 2014.

As a result, I dismissed the Tenants' Application to: cancel both notices to end tenancy, to allow the Tenants to change the locks, and for the Landlord to comply with the Act, regulation or tenancy agreement, as these are now moot points.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for July, August and September, 2014?
- Is the Landlord entitled to keep the Tenants' deposits in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on March 15, 2014 on a month to month basis. No written tenancy agreement was signed but rent was established between the parties in the amount of \$1,700.00 which is payable on the first day of each month.

The Landlord explained that after the tenancy had started, he become aware that the Tenants had pets **inside** the rental suite which they were not permitted; only chickens were permitted **outside** of the rental suite. As a result, he requested a pet damage deposit from the Tenants for half of the month's rent and agreed with the Tenants that this would be paid in monthly installments of \$100.00 until the balance had been fully paid.

The Landlord and Tenants disagreed on the installments paid. The Tenants presented receipts which they had completed by themselves of their own accord as a way to record payments made during the tenancy. After some discussion around the dates of these payments the parties agreed that the Tenants had paid; \$800.00 as a security deposit on March 9, 2014; and \$300.00 which had been paid in three installments to the Landlord in June, 2014 towards a pet damage deposit. In the interest of mutual agreement on this issue the Landlord agreed that the total amount in deposits held by him was \$1,100.00.

The Landlord explained that for July, 2014 the Tenants failed to pay rent in the amount of \$1,700.00 plus \$100.00 for the contribution towards the pet damage deposit. On July 2, 2014, the Landlord issued the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") in the amount of \$1,800.00 with an effective vacancy date of July 12, 2014. The Notice was provided in written evidence.

The Landlord explained that on the same day one of the Tenants paid him \$900.00 in cash for which he issued a receipt to the Tenants for use and occupancy only as to not re-instate the tenancy and now claims that \$800.00 is still outstanding for July, 2014.

The Tenants explained that, in addition to the \$900.00, they had paid the Landlord, that they had paid \$695.00 in cash leaving an outstanding balance for July, 2014 rent in the amount of \$105.00, which was still unpaid. The Landlord refuted this claim. The Tenants both testified and refereed to a witness statement provided in written evidence explaining that they had met with the Landlord on July 7, 2014 where they provided him with cash payment for the remainder of the rent in the amount of \$695.00 but the Landlord failed to give them a cash receipt for this amount.

The Landlord continued to testify that the Tenants had not paid him rent for August or September, 2014 in the amount of \$1,700.00 per month.

The Tenants acknowledged that they had not paid rent for September, 2014. However, in relation to the unpaid rent for August, 2014, the Tenants explained that the Landlord had drawn up a written agreement to be signed by the Tenants which gave permission for the Tenants to not pay rent for August, 2014 **if** they moved out by the end of August, 2014. The Tenants acknowledged that they did not sign this document but accepted it as a verbal agreement that they did not have to pay rent for August, 2014 even though they were unable to commit to the move out date documented on the agreement.

I informed the Tenants during the hearing that they had not signed the written agreement and therefore this agreement was void and even if it had been signed by the Tenants, the condition to forgo rent by the Landlord was based on the Tenants moving out of the rental suite by the end of August, 2014 which they did not. As a result, the Tenants were informed that they would be liable to unpaid rent for the months of August and September, 2014.

The Tenants then explained that they should not have to pay for rent because they did repairs to the rental suite and the Landlord switched off their air conditioning. At this point I explained to the Tenants their obligations to pay rent, even when the Landlord does not comply with the Act in doing repairs and withdrawing services.

Although the Landlord stood by his testimony in relation to the amount of unpaid rent for July, 2014, the Landlord was agreeable for the Tenants to pay him for the amount testified to by the Tenants (\$105.00) for this month.

Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement whether or not a Landlord complies with the Act.

Based on the testimony and evidence presented by both parties, I find that the Tenants had no grounds to withhold rent for the months of August and September, 2014 and I find that they are liable for these two months. In addition, I find that the failure of the Landlord to provide the Tenants with consistent rent receipts throughout this tenancy and the evidence presented by the Tenants in relation to payments made towards the July, 2014 rent convinces me that only \$105.00 rent is outstanding for this month; in addition, the Landlord was satisfied with this amount being awarded to him. Therefore, the total amount awarded to the Landlord for unpaid rent is \$3,505.00.

The Tenants acknowledged that there was an amount of rent unpaid for July, 2014; the Landlord would have been entitled to an Order of Possession on this basis and the Tenants would not have been successful in cancelling the notice to end tenancy for unpaid rent which would have ended the tenancy. Therefore, I find that the Landlord is the only party in this case that should be awarded the filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenants is \$3,555.00.

As the Landlord already holds \$1,100.00 in the Tenants' deposits, which was agreed by the parties at the start of the hearing, I order the Landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlord is awarded **\$2,455.00**.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **on September 30, 2014 at 1:00 pm**. This order may then be enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental unit on this date and time.

I further grant a Monetary Order in the amount of **\$2,455.00** in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenants and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenants fail to make payment.

The Tenants' Application is dismissed apart from the monetary portion. The Tenants are at liberty to make an Application and prove their claim for repairs completed and money owed or compensation for loss under the Act, regulation or tenancy agreement.

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: September 11, 2014

Residential Tenancy Branch

