



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, OPR, MNR, MNSD, FF
 CNR, RP, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Landlord and Tenants. The Tenants applied to cancel a notice to end tenancy for unpaid rent, for the Landlord to make repairs to the rental unit, and to recover the filing fee.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenants’ security deposit, and to recover the filing fee.

The Landlord and both Tenants appeared for the hearing and provided affirmed testimony during the hearing as well as documentary evidence prior to the hearing. No issues were raised in relation to the service of the Applications and the parties’ written evidence. However, the Tenants explained that they had served the Landlord with additional written evidence but a copy was not provided to the Residential Tenancy Branch which I could not consider in this hearing as this was not before me.

Issues to be Decided

- Is the notice to end tenancy to be cancelled and the tenancy to continue?
- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to keep the Tenants’ security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy started on April 1, 2014 and was for a fixed term tenancy of six months. A written tenancy agreement was completed with the Tenants

which shows that the tenancy was due to end on August 1, 2014 and after this time period the Tenants were required to move out of the rental suite; the Landlord clarified that the end date was a mistake and was supposed to read September 30, 2014 which would have correlated to the six month period. Rent is payable by the Tenants in the amount of \$890.00 on the first day of each month and the Landlord holds a \$375.00 security deposit relating to the Tenants.

The Tenants disputed the start date of the tenancy explaining that it started on March 1, 2014. However, the Tenants acknowledged that they did sign a tenancy agreement with a fixed date which ended on September 30, 2014.

The Tenants testified that the Landlord offered them another fixed term tenancy at the end of the current tenancy but failed to produce a tenancy agreement and therefore the tenancy continued. The Landlord disputed this stating that the Tenants had failed to pay rent for September, 2014 and he was looking to end the tenancy at the end of the fixed term as the Tenants had failed to pay rent.

The Tenants explained that due to the alleged mold issues in the tenancy they were planning on vacating the rental suite on November 1, 2014 in any case.

The Landlord testified that the Tenants owed \$200.00 in unpaid rent before September, 2014 and provided e-mail evidence indicating requests made to the Tenants for this payment.

The Tenants then failed to pay full rent for September, 2014 and as a result the Landlord served the Tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it on the Tenant's door on September 2, 2014. A copy of the Notice provided in written evidence, shows an expected date of vacancy of September 16, 2014 due to \$1,090.00 in unpaid rent; the Landlord testified that this amount comprised of September, 2014 rent in the amount of \$890.00 and \$200.00 in rental arrears prior to September, 2014.

The Landlord further testified that the Tenants had over held the tenancy and failed to pay for October, 2014 rent. As a result, the Landlord seeks a total amount of rent arrears from the Tenants in the amount of \$1,980.00.

The Tenants testified that the \$200.00 was payable by another renter who had a separate tenancy agreement with the Landlord; however this agreement was not provided in written evidence by the Tenants. In relation to unpaid rent the Tenants explained that they had not paid rent for September and October, 2014 due to alleged

mold issue in the unit which the Landlord had failed to deal with. However, this Application did not seek to deal with alleged mold issues.

The Landlord denied the Tenant's oral evidence in relation to the \$200.00 relating to a previous Tenant. The Landlord submitted that the Tenants had brought in another person into the tenancy and that person had not paid his portion of the rent and the Tenants were seeking to blame that on the Co-tenant by submitting he was a previous renter under a separate tenancy agreement.

Analysis

Section 26(1) of the Act requires a Tenant to pay rent when it is due under a tenancy agreement **whether or not the Landlord complies with the Act**, unless the Tenant has authority under the Act to make deductions or not pay rent.

Section 44(1) (b) of the Act also stipulates that a tenancy may end if the tenancy agreement is a fixed term tenancy and provides that the Tenant must vacate the rental unit on the date specified as the end of the tenancy.

In this case, I find that neither party renewed the tenancy in writing or by payment of rent that caused the fixed term to continue into another tenancy. Therefore, in accordance with the written tenancy agreement which the Tenants signed, the Tenants were required to vacate the rental suite on the end date of the tenancy irrespective of the Landlord's alleged failure to comply with the Act for mold issues.

Although the Tenants did dispute the Notice within the time limits set out under Section 47(4) of the Act, I find that the Tenants relied on their verbal testimony regarding alleged mold issues and I find that this is not sufficient authority under the Act to not pay rent.

As the tenancy has now ended under the fixed term agreement and the effective date of the Notice has passed, which I now uphold, and the Tenants have not paid rent, I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant.

In relation to the Landlord's monetary claim for unpaid rent, I find that the Landlord is entitled to unpaid rent for the months of September and October, 2014 for the time the Tenants were over holding the tenancy and still in control and possession of the rental suite.

I also accept the Landlord's evidence of the Notice and the text message requests made for the outstanding \$200.00 on the balance of probabilities, that this amount is payable by the Tenants. I do not accept the Tenant's submission that this amount was

payable by a previous renter, rather I determine that an occupant or Co-tenant residing in a rental suite with or without the Landlord's permission has no impact on the Tenants' joint obligation to pay full rent under a tenancy agreement. Co-tenants are jointly and severally liable for their rights and obligations in a tenancy.

As a result, I find that the Landlord is awarded rental arrears in the amount of **\$1,980.00** claimed.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$50.00** filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable to the Landlord is \$2,030.00.

As the Landlord already holds the Tenants' security deposit of \$375.00, and no interest is payable on this amount, 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 the balance of \$1,655.00.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession effective **two days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental suite.

I also grant the Landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,655.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Tenants' Application is dismissed **without** leave to re-apply.

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: October 09, 2014

Residential Tenancy Branch

