



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF
 CNR, OLC, MNR, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords for an Order of Possession for unpaid rent or utilities. The Landlords also applied for a Monetary Order for unpaid rent and to recover the filing fee. The Tenants applied to cancel the notice to end tenancy, for the Landlord to comply with the Act, regulation or tenancy agreement, for the cost of emergency repairs and to recover the filing fee.

Both parties appeared for the hearing and provided affirmed testimony. No issues were raised in relation to the service of the documents and documentary evidence provided by both parties prior to the hearing.

Preliminary Matters

At the start of hearing the Tenants explained that they were in the process of vacating the rental suite and would be fully moved out by the end of day of this hearing. The Tenants agreed that the Landlord will be issued with an Order of Possession effective two days after service on the Tenants in order to affect the end of the tenancy. As a result, I dismiss the Tenant’s Application to cancel the notice to end tenancy as this is now a moot issue and does not require a determination.

This left the parties’ monetary claims which I proceed to hear. The Landlord’s Application disclosed a claim of \$5,500.00 related to unpaid rent. The Tenant’s Application was in relation to \$1,850.00 for the cost of emergency repairs. The Tenants testified however that they had a claim short of \$10,000.00 and that they had submitted documentary evidence to support their claim for the additional monetary compensation for loss under the Act which was linked to their claim for the emergency repairs.

In addition, the Tenants had completed a Monetary Order Worksheet relating to their registered mail and photocopying costs for a total amount of \$204.47, which I explained are not awarded as these are costs for dispute resolution that have to be borne by each party. I also explained to the Tenants the procedure for amending their Application as set out by Rule 2.11 of the Rules of Procedure and that the filing fee for making an Application in excess of \$5,000.00 is \$100.00.

The Tenants were informed that as the Landlords had only been put on notice for a monetary claim of \$1,850.00, I would not be able to consider their claim for monetary compensation for loss under the Act in this hearing. The parties were offered an opportunity to settle this matter through mutual agreement but after a short discussion, it was evident that the parties were not going to be able to reach settlement.

The Tenants explained that they wanted to pursue their increased monetary claim as it was inextricably linked to their cost for emergency repairs. As a result, I dismissed the Tenants' claim for the cost of emergency repairs and provided leave to re-apply for this amount along with their claim for monetary compensation for loss under the Act. The Tenants were cautioned about the requirement to meet the burden of proof when making a claim for monetary compensation from another party and to provide documentary evidence which clearly outlines and supports their case.

As a result, the hearing continued to hear the Landlord's monetary claim for unpaid rent.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent for August, September and October, 2014?

Background and Evidence

Both parties agreed that this tenancy started on April 1, 2014 on a month to month basis. A written tenancy agreement was completed and rent was established in the amount of \$1,850.00. The Tenants paid a security and pet damage deposit at the start of the tenancy in the amount of \$925.00 each which the Landlord still retains.

The Landlords testified that the Tenants had not paid rent for the months of July, August and September, 2014 in the amount of \$5,550.00. The Tenants explained that they had not paid rent because in July, 2014 there was a flood in the rental suite and that they had engaged in hours of cleaning and dealing with the aftereffects which was the Landlord's responsibility, and in the process their belongings and possessions had been damaged. The Tenants also explained that they were told by the Residential Tenancy

Branch that they would not have to pay rent until the determination was made in this hearing as their claim exceeded that of the Landlords.

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. In this case I find that the Tenant is liable for the costs of unpaid rent to the Landlord in the amount of \$5,550.00 as well as the \$50.00 filing fee.

However, the Tenants are still at liberty to make a claim for costs associated with the alleged lack of cleaning and repairs not undertaken by the Landlord and to claim for monetary compensation for damage or loss under the Act as disclosed by them at the start of the hearing.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favor of the Landlord effective **2 days after service on the Tenants**. This order may then be enforced in the Supreme Court as an order of that court.

I further grant a Monetary Order in the amount of **\$5,600.00** 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 the cost of emergency repairs and monetary compensation for loss under the Act.

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 22, 2014

Residential Tenancy Branch

