



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' Application: CNR, MT, MNDC, ERP, RP, RPP, LRE

Landlords' Application: OPR, MNR, 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 and more time to dispute the Notice; for orders for repairs, return of personal property and for conditions to be set on the landlord's right to enter the rental unit; and, for monetary compensation for damage or loss under the Act regulations or tenancy agreement. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. 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

At the outset of the hearing, the parties were given instructions as to appropriate conduct during a hearing, including refraining from interrupting the proceedings. Despite giving the parties multiple cautions about interruptions, both parties interrupted the proceedings at various times during the hearing. The male tenant, in particular, was unable to control his outbursts and approximately 20 minutes into the hearing his telephone line was muted, so that he could hear but could not interrupt the proceeding. The telephone line for the person assisting the tenants remained open throughout the proceeding. The tenant's telephone line was unmuted near the end of the proceeding so that the tenants could ask questions and provide a mailing address for their decision.

Both parties confirmed that the tenants vacated the rental unit in September 2014. As the tenants have since vacated the property I determined that it was unnecessary to further consider whether the 10 Day Notice should be upheld or cancelled or the landlord's request for an Order of Possession. Further, I determined that the tenants'

request for return of personal property related to furnishings provided with the rental unit and not the tenant's personal property. Thus, I found it unnecessary to further consider the tenants' requests for repair orders and other orders. I confirmed with both parties that the only remaining issues to determine were the parties' respective monetary claims.

With respect to the tenant's monetary claim, they indicated they were seeking \$3,500.00 on their Application and referenced unauthorized entry, loss of services or facilities, and threats in their details of dispute. The tenants were asked to explain how they determined the amount claimed. The tenants stated their claim has increased significantly and I noted that in the tenant's evidence package it appeared as though they were seeking compensation of nearly \$9,000.00 and several other issues were raised by the tenants.

Under section 59 of the Act, a party filing an Application must provide sufficient particulars so that the other party can understand the basis for the claim. Further, if a party seeks to amend their Application they must do so in a manner that complies with the Rules of Procedure, and this includes serving the other party with a copy of an amended Application. These requirements are in keeping with the principles of natural justice.

I found the tenants did not provide sufficient particulars with their Application and I found the tenants did not amend their original monetary claim in a manner that complies with the Rules of Procedure and did not serve the landlord with an amended Application. Therefore, I declined to proceed with the tenants' monetary claims against the landlord and dismissed their claim with leave to reapply.

The landlord verbally requested that his Application be amended to include a loss of rent for the month of October 2014 due to an alleged infestation of fleas caused by the tenants. AS the landlord had not included a damage claim as part of this Application and the landlord sought to increase his monetary claim without prior notification to the tenants, I denied the request for amendment. The landlord was informed of his right to file another Application against the tenants if he so choses.

Both parties raised issues with service of hearing documents, as follows.

The landlord testified that he gave two copies of his Application for Dispute Resolution to the female tenant. The tenants refuted this submission and claimed the landlord gave two copies of the landlord's Application to the male tenant. The tenants confirmed that the male tenant then gave one of the hearing packages to the female tenant. Since

both tenants acknowledged receipt of the landlord's Application I deemed them to be sufficiently served as provided under section 71 of the Act.

The tenants denied receiving an evidence package from the landlord. The landlord testified that he gave his evidence package to a person residing at the rental unit with the tenants on September 22, 2014. The tenants claimed that there were no occupants residing with them at the rental unit on September 22, 2014. Since the landlord did not produce the person he claims to have given the evidence package I found the disputed testimony insufficient to satisfy me that the tenants were sufficiently served with the landlord's evidence package. As the person serving documents bears the burden to prove documents were served, I excluded the landlord's evidence package from further consideration.

The tenants claimed that their evidence package was posted to the door of the landlord's personal residence on September 15 or 16, 2014. The landlord stated that he found the tenant's evidence package on the floor outside his door on September 28, 2014. Given the tenants included a written submissions in their evidence package that were signed on September 23, 2014 I found it implausible that the tenants served the same package upon the landlord on September 15 or 16, 2014 as they stated. Therefore, I excluded the tenants' evidence package from further consideration.

In light of the above, I informed the parties that I would proceed to hear the landlord's claim for unpaid rent only based upon verbal testimony.

Issue(s) to be Decided

Is the landlord entitled to recover unpaid rent from the tenants?

Background and Evidence

The landlord seeks to recover unpaid rent of \$370.00 for July 2014; \$1,140.00 for August 2014; \$1,140.00 for September 2014 and late fees of \$25.00 per tenant for each of these months.

It was undisputed that a tenants and landlord entered into a co-tenancy agreement and the tenants were required to pay monthly rent of \$1,140.00. It was also undisputed that the tenants did not pay any rent for the months of August or September 2014.

With respect to the month of July 2014 it was undisputed that \$570.00 was received by the landlord on behalf of the male tenant; however, the portion collected from or on

behalf of the female tenant was under dispute. The female tenant submitted that she paid the landlord \$200.00 in July 2014 and that the balance of \$370.00 was to be paid by the landlord's agent since she did work for him. The landlord's agent acknowledged that the female tenant had performed yard work services for him for which he compensated her \$200.00 by giving that to the landlord in July 2014; however, the tenant did not give the landlord \$200.00 and the landlord's agent he did not agree to compensate her a further \$370.00.

It was undisputed that on August 3, 2014 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants acknowledged that they did not pay the outstanding rent, but they filed to dispute the Notice on August 12, 2014.

The tenants were asked to explain the reason for waiting nine days to dispute the 10 Day Notice. The male tenant explained that initially the tenants intended to vacate the rental unit and then they changed their mind and decided to continue to reside in the rental unit without paying rent as a form of compensation for the conditions in which they lived. The male tenant claimed that a staff-person with the Residential Tenancy Branch informed the tenants that by filing an Application they did not have to pay any rent.

The tenants were of the position that rent has been satisfied for July 2014 as explained previously and they do not feel obligated to pay rent for August 2014 or September 2014 due to a bug infestation and other breaches of the Act by the landlord including unlawful entry and threats.

The female tenant also submitted that the landlord had offered to drop the claim for unpaid rent if the tenants would drop criminal charges they filed against the landlord. The tenant acknowledged that she did not drop the criminal charges and, as such, I did not explore this position further since the tenants did not fulfill their part of the alleged deal.

The female tenant also submitted that the landlord had offered to waive the outstanding rent due if the tenants moved to a different rental unit on the property. The tenants acknowledged that they did not move to the other unit and, as such, I did not explore this position further since the tenants did not fulfill their part of the alleged deal.

The tenants also submitted that they were forced to vacate the premises for fear of their safety in mid-September 2014.

The landlord denied the tenants' allegations. The landlord stated that it is uncertain as to the exact date the tenants vacated but that they found the rental unit had been vacated closer to the end of September 2014.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with the terms of tenancy, 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 and specific circumstances when a tenant may withhold rent; they are: overpayment of the security deposit; overpayment of rent; a tenant has paid for emergency repairs and met other criteria of section 33; or, the tenant has been authorized by the Arbitrator or the landlord to make deductions from rent.

Although the tenants alleged a pest infestation and other breaches of the Act by the landlord, the circumstances they described do not form a legal basis to withhold rent under the Act, as described above. Rather, if a tenant is of the position the landlord is in breach of the Act with respect to repairs or other obligations, the tenant's remedy is to seek the appropriate order(s) and obtain authorization to reduce rent from an Arbitrator before withholding rent. Further, the act of filing an Application for Dispute Resolution does not in itself entitle a tenant to withhold rent from the landlord.

In light of the above, I find the landlord was entitled to collect the full amount of rent payable for the month of August 2014 and I award the landlord unpaid rent of \$1,140.00 for August 2014.

As the tenants did not pay rent for August 2014 and did not file to dispute the 10 Day Notice within five days of receiving the 10 Day Notice, I find the tenants should have vacated the rental unit in August 2014. Since the tenants did not vacate the rental unit pursuant to the 10 Day Notice and continued to occupy the rental unit well into September 2014 I find the landlord entitled to recover loss of rent from the tenants for the month of September 2014.

With respect to unpaid rent for July 2014, it is important to note that my authority to resolve disputes is limited to residential tenancy agreements and does not extend to disputes concerning labour agreements or contracts for services. Labour agreements or contracts for services must be enforced in the appropriate forum even if the parties also have landlord/tenant relationship. Only in circumstances where the landlord agreed that the tenant may withhold all or a portion of rent as compensation for labour or services may I make a finding as to the amount of rent that was satisfied. In this case,

the parties were in dispute as to whether the female tenant performed work for which she was entitled to be compensated by the landlord's agent and I do not have the jurisdiction to resolve that dispute. I further find the disputed verbal testimony that \$370.00 was deducted from rent payable for July 2014 as compensation for work performed is insufficient for me to make such a finding. Therefore, since it was undisputed that \$370.00 of the rent was not paid by the tenants for the month of July 2014 I award that amount to the landlord and the parties may resolve their dispute concerning work performed by seeking remedy in the appropriate forum.

With respect to late fees, the Residential Tenancy Regulations provide that a landlord may charge such fees, up to \$25.00 per occurrence, provided the tenancy agreement includes such a provision. The landlord requested late fees of \$25.00 from each tenant for each month and a landlord cannot require each tenant pay such fees where there is a co-tenancy agreement, as in this case. Since I was not presented documentary evidence to demonstrate that the tenancy agreement signed by the parties included a provision for late fees that complies with the Regulations I deny this portion of the landlord's claim.

As the landlord was successful in establishing an entitlement to recover unpaid and loss of rent, I further award the landlord recovery of the \$50.00 filing fee paid for this Application.

Given all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: July 2014	\$ 370.00
Unpaid Rent: August 2014	1,140.00
Loss of Rent: September 2014	1,140.00
Filing fee	<u>50.00</u>
Monetary Order	\$2,700.00

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

As neither party raised the issue of disposition of the security deposit, it remains in trust to be administered in accordance with the Act.

Finally, in recognition that the tenants made allegations as to serious breaches of the Act by the landlord, as I informed the parties during the hearing several times, the breaches alleged were not relevant to the issue of unpaid rent as section 26 of the Act

precludes a tenant from withholding rent due to a breach of the Act unless the tenant obtains prior authorization from an Arbitrator or in specific circumstances described previously. However, as the parties were informed, the tenants remain at liberty to file another Application to seek monetary compensation for damages or loss they suffered as a result of the landlord's breach of the Act, regulations or tenancy agreement, if any. Therefore, by way of this decision, I authorize the release of the documents submitted to the Branch by the tenants upon their request.

Conclusion

The landlord has been provided a Monetary Order for unpaid and loss of rent for July 2014 through September 2014 in the amount of \$2,700.00 to serve upon the tenants and enforce as necessary. The landlord remains at liberty to file another Application to seek any other damages or loss that resulted from this tenancy that were not addressed in this decision.

The tenants' claim for monetary compensation against the landlord has been dismissed with leave to reapply.

The security deposit remains in trust, to be administered in accordance with 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 10, 2014

Residential Tenancy Branch

