



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC MNDC MNSD OPC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47 and a notice to end tenancy for non payment of rent pursuant to section 46; and
- b) A monetary order for \$19,000 (as amended) for a rent rebate and compensation for lack of maintenance and repair contrary to section 32

Service:

The Notice to End Tenancy for unpaid rent is dated August 4, 2014 to be effective August 14, 2014 and the Notice to End Tenancy for cause is dated August 4, 2014 to be effective September 4, 2014. The effective date on the Notice for cause is automatically corrected to September 30, 2014 pursuant to section 53 of the Residential Tenancy Act as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The Notices were served on the tenant. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent or sufficient cause to end the tenancy? Or is the tenant entitled to relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in September 2012 with the female tenant, rent is \$1450 a month and there is no security deposit as the tenant requested it be applied to outstanding rent in the past. A signed note by the female tenant dated May 29, 2013 with this request is in evidence.

The landlord served a Notice to End Tenancy for unpaid rent of \$3300 on August 4, 2014. The tenant stated in the hearing that they had still not paid this rent because of repairs that had not been done. They are claiming compensation of \$19,000.

The landlord also served a Notice to End Tenancy for cause on August 4, 2014 for repeated late payment of rent among other causes. The landlord provided evidence of several 10 day Notices to End Tenancy dating from 2012 and many notes of partial payments and excuses by the tenants.

Included with the evidence are copies of a number of Notices to End Tenancy, the tenancy agreement, a letter of complaint by a neighbour and a tradesman letter stating how difficult it was to do repairs at the property.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that there is unpaid rent and they have good cause to evict the tenant. I find the evidence of the landlord credible that there is unpaid rent of \$3300 as of August 4, 2014 as it is supported by the tenants' admission that this rent has not been paid. Although they complained about the condition of the home and said they withheld rent for that reason, I find section 26 of the Act provides that tenants must pay their rent on time whether or not the landlord fulfills his obligations under the Act. I dismiss the Application of the tenant to cancel the Notices to End Tenancy. As requested by the landlord and negotiated between the parties, I find the landlord entitled to an Order of Possession effective October 27, 2014.

The tenants submitted a substantial monetary claim against the landlord but they provided no documentary evidence to support their claim such as professional inspections, invoices for work done and other evidence. Although the tenants asked for more time, I find the evidence is that the tenants had sufficient time to prepare what was necessary. The tenant wrote in a letter to the landlord on May 1, 2014 that she would prepare an accounting and on her Application, Monetary Order Worksheet, filed on August 11, 2014, she said she would supply documentation prior to the hearing but no breakdown of their expenses or invoices were ever provided. The landlord said he would suffer significant harm if the matter was delayed since the tenants are not paying rent and causing some issues with neighbours. I dismiss this portion of the tenants'

Application and give them leave to reapply. The tenants said they are pursuing a civil claim against the landlord for personal injury but I decline to consider this under the Act.

The landlord said he filed an Application on October 1, 2014 under file #826902 for a monetary order for back rent and other items so this might be an appropriate time for the tenants to reapply if necessary.

For the above reasons, I dismiss the application of the tenant to cancel the Notices to End Tenancy. I find the tenancy is terminated on August 14, 2014 according to the Notice to End Tenancy for unpaid rent.

Conclusion:

The Application of the Tenant to set aside the Notices to End Tenancy is dismissed. The tenancy is at an end. Pursuant to section 55 of the Act, an Order of Possession is issued (as negotiated) to the landlord effective October 27, 2014.

The Application of the tenants for compensation for repairs allegedly not completed is dismissed with leave to reapply.

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

