



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and an order compelling the landlord to perform repairs and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the hearing, the tenant advised that he vacate the rental unit by November 3, 2014. As the tenancy will be ending, I consider the tenants' application to have been withdrawn.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. The tenancy began in April 2013 at which time the tenants paid an \$850.00 security deposit. Rent was set at \$1,700.00 per month. The tenants failed to pay rent in the following months:

Month	Amount owing
September 2013	\$1,700.00
June 2014	\$1,700.00
July 2014	\$ 500.00
August 2014	\$1,700.00
September 2014	\$1,700.00
October 2014	\$1,700.00
Total:	\$9,000.00

The tenant agreed that he had not paid the landlord the rent due and that he did not have the landlord's agreement to withhold rent or an order from the Residential Tenancy Branch permitting him to withhold rent. The tenant objected that the rental unit was not worth \$1,700.00 per month because of flooding and mould issues.

Analysis

At the hearing, the parties agreed that the landlord was entitled to an order of possession effective November 3. I grant the landlord an order effective on that date which may be filed in the Supreme Court for enforcement if necessary.

Section 26(1) of the Act requires tenants to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. The tenant acknowledged that he did not have an order from the Residential Tenancy Branch authorizing him to withhold his rent and further acknowledged that he did not have the landlord's permission to withhold rent. The only other circumstances under which the tenant can withhold rent is if he has paid money from his own pocket to perform emergency repairs after having made 2 attempts to contact the landlord and given him a reasonable opportunity to perform repairs. The tenant gave no evidence that he had paid to have repairs performed. I find that the tenant had no legal basis on which to withhold his rent.

I find that the landlord is entitled to recover \$9,000.00 in unpaid rent as well as the \$50.00 filing fee paid to bring this application. I order the landlord to retain the \$850.00 security deposit in partial satisfaction of his claim and I grant him a monetary order under section 67 for the balance of \$8,200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$8,200.00.

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 31, 2014

Residential Tenancy Branch

