



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OPC, MND, MNSD, FF

Introduction:

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent, loss of income, cost of repairs and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim.

The tenant applied for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent, loss of income, cost of repairs and the filing fee? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on August 01, 2014 for a fixed term of one year. The monthly rent is \$2,000.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,000.00. The tenants admitted that they had a pet but failed to inform the landlord and did not pay a pet damage deposit despite repeated requests from the landlord.

On August 26, 2014, the landlord served the tenants with a notice to end tenancy for cause. The tenants disputed the notice in a timely manner.

However, at the start of the hearing, the tenants indicated that they would not be opposed to moving out. They agreed that they had not paid rent for October 2014. The tenants were not sure of when they would be moving out and the landlord offered to let them stay until the end of October if they paid rent this date – October 08, 2014.

The landlord stated that since the tenancy would be ending prior to the end date of the fixed term, the landlord is making a claim for loss of income for the balance of the term. The landlord is claiming rent for 10 months from October 2014 to July 2015 for a total of \$20,000.00.

The landlord is also claiming damage to the backyard, pond and inside of the home in the amount of \$3,600.00. The landlord filed photographs of the damage to the outside of the home.

Analysis

The tenants applied to dispute the notice to end tenancy but have agreed to move out. Therefore the tenants' application was not necessary and accordingly they must bear the cost of filing their application.

The tenants had entered into a fixed term lease of one year. By ending the tenancy prior to the end date of the fixed term, the tenants have breached a term of the tenancy agreement, which could result in a loss of income for the landlord.

However, the tenancy has not yet ended and therefore the landlord has not yet suffered a loss of income. Accordingly the landlord's claim for loss of income is dismissed with leave to reapply in the event that he does suffer a loss of income from the tenants' breach of the tenancy agreement. However since the tenants are still in occupation of the rental unit and have agreed that rent for October is not paid, I find that the landlord has established a claim of \$2,000.00.

The landlord is also claiming the cost of repairs. Again the tenants have not yet moved out and therefore the landlord must give the tenants the opportunity to repair any damage that they may have caused. The landlord's claim for repairs and to retain the security deposit is dismissed with leave to reapply.

The tenants agreed to move out and therefore their application to cancel the notice to end tenancy is dismissed. Pursuant to section 55, I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The landlord has agreed to refrain from serving this order prior to October 31, 2014, if the tenants pay rent for October by the end of October 08, 2014.

Since the landlord has proven a portion of his claim, I award him a portion of the filing fee in the amount of \$50.00. Overall the landlord has established a claim of \$2,050.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$2,050.00**.

The tenant's application is dismissed.

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 08, 2014

Residential Tenancy Branch

