



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Landlord has issued the Tenants a 10 day Notice to End Tenancy for unpaid rent and a One Month Notice to End Tenancy for alleged cause. The Tenants have only disputed the One Month Notice to End Tenancy and have also made other claims in their Application to cancel the One Month Notice. The hearing for the Tenants' Application is set for a future date.

However, as set out below, the tenancy is ending under the 10 day Notice to End Tenancy. The parties may still attend the Tenants' hearing for other issues in the Tenants' Application; however, the tenancy is ending under this Decision based on the 10 day Notice to End Tenancy.

The Tenants had requested an adjournment of this proceeding, so that the 10 day Notice to End Tenancy and their Application to cancel the One Month Notice to End Tenancy could be heard

together. However, the Landlord has submitted that she does not agree to an adjournment to allow this.

I note the Landlord has applied for relief under the 10 day Notice to End Tenancy, which the Tenants did not dispute, and which is the only matter I considered today.

I note that the parties are quite acrimonious and each had to be cautioned about interrupting the other party during the hearing. The parties have also submitted a great deal of evidence, most of which was not relevant to the matters before me today.

I also note that the Landlord made significant monetary claims regarding the condition of the rental unit and property, alleging that the Tenants had made changes to the property without consent and that these changes will cause future losses.

However, under the Act the Tenants have a right to make repairs prior to the end of the tenancy to any damages they allegedly may have caused, or to restore any changes they may allegedly have made, to the rental unit or property without the written consent of the Landlord.

As the tenancy had not ended at the times these claims were made by the Landlord, I find the claims made by the Landlord were premature, and I dismiss these with leave to reapply.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

This tenancy began on or about July 6, 2014. It appears the Landlord prepared a tenancy agreement, although the Landlord submits the Tenants refused to sign this.

Nevertheless, the parties agree that the monthly rent is \$1,400.00 and is due the first day of the month.

The Landlord testified that the Tenants were personally served on September 2, 2014, with a 10 day Notice to End Tenancy for non-payment of September rent of \$1,400.00 (the "Notice").

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that after she served the Tenants with the Notice she received payments from the Tenants via electronic transfer. She testified that on September 2, she received \$800.00, and then on September 4 she received \$374.20. The Landlord claims for the balance of rent due for September in the amount of \$225.80.

The Landlord testified and both parties have submitted documents showing that the Tenants had a pattern of paying the Landlord the rent by these electronic transfers. The payments were made to a specific email account owned by the Landlord. However, the only payments that were made to the Landlord's specific email account in September were the ones for \$800.00 and \$374.20. The specific email account has a name associated with the Landlord.

The Tenants have provided records showing they made other payments via electronic funds transfer in September; however, these records differ from the records showing payments in September to the Landlord, and furthermore, these payments are not identified as being made to the Landlord's specific named email account, but to a numbered account with no name attached.

The Tenants testified they did not dispute the Notice because they felt they had paid the Landlord all the rent owed. In fact, the Tenants' Advocate submitted in writing that the Tenants had actually overpaid the Landlord for rent. The Tenants also testified they felt they did not owe the Landlord any money and had over paid rent.

The Tenants testified that in July the mother of the female Tenant paid the Landlord \$350.00 in cash for pro-rated July rent, as the Tenants did not move into the rental unit on the first day of the month in July. The Tenants' position is that the \$350.00 paid in July, as well as the money paid in September, are proof they overpaid the Landlord for rent.

The Tenants further testified that they did not dispute the Notice because they went to an advocate who told them, based on what the Tenants had told her, that they did not owe the Landlord any rent for September.

During the course of the hearing the female Tenant acknowledged it had been a mistake not to dispute the Notice. The Tenant testified she has physical health issues that make it difficult for her to walk, so she did not go and dispute the Notice. However, she acknowledged the male Tenant has no difficulty walking.

The Tenants also testified that they felt the Landlord owed them money because of problems with the tenancy and the rental unit. It appeared from their testimony that they may have felt they could deduct rent for the alleged shortcomings.

The Landlord testified that she had not been paid cash by the mother of the female Tenant in July and in fact she had never met the Tenant's mother.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenants have not paid all the rent due for September and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice; which was September 11, 2014.

From the documentary evidence and testimony I find that the Tenants made two payments to the Landlord for September rent in the amount of \$800.00 and \$374.20.

Even if I accept the Tenant's mother paid the Landlord cash funds in July (which I make no findings on), it does not appear this payment was intended for September rent.

I find the Tenants have failed to prove that the other funds electronically transferred in September were directed into an account held by the Landlord. The documents for these transfers differ significantly, and furthermore, the account the funds were transferred into is not identified as the same one held by the Landlord for previous payments. Therefore, I find the Tenants still owe the Landlord \$225.80 for September rent.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent, such as an order from an Arbitrator allowing them to deduct monies from rent.

In this situation the Tenants had no authority under the Act to not pay all the rent due to the Landlord.

Therefore, I find that the Notice is valid and the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$275.80**, comprised of \$225.80 for September rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord may retain **\$275.80** from any security deposit held in full satisfaction of the claim, or, the Landlord may enforce the attached monetary order under section 67 for the amount owed. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord's claims based on the allegations the Tenants altered the property or rental unit are dismissed with leave to reapply.

Conclusion

The Tenants failed to pay all the rent due for September and did not file to dispute the 10 Day Notice to End Tenancy.

By failing to dispute the Notice and by failing to pay the Landlord all the rent due for September, the Tenants are presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice to End Tenancy.

The Landlord is granted an order of possession effective two days after service on the Tenants, may retain **\$275.80** from any security deposit held in full satisfaction of the claim, or, may enforce the attached monetary order.

The Landlord's claims based on the allegations the Tenants altered the property or rental unit are dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 30, 2014

Residential Tenancy Branch

