



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF (Landlords' Application)
MT, CNR, MNDC, LRE, AAT, LAT, FF, O (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by both the Landlords and the Tenants.

The Landlords applied for an Order of Possession and a Monetary Order for unpaid rent and to recover the filing fee. The Tenants applied for the following issues:

- To cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") and for more time to cancel the Notice;
- For money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement;
- To suspend or set conditions on the Landlords' right to enter the rental unit;
- To allow the Tenants or their guests access to the unit;
- To authorise the Tenants to change the locks to the rental unit;
- To recover the filing fee from the Landlords; and
- For 'Other' issues of which none were identified during the hearing.

The Landlords and Tenants appeared for the hearing and both parties provided written evidence prior to the hearing.

No issues were raised by the parties in relation to the service of the documents and evidence under the Act and the Rules of Procedure.

Preliminary Matters

The Landlords had initially made an Application for Direct Request (a non-participatory hearing) for an Order of Possession and a Monetary Order for unpaid rent. However, this application process had been denied by the Residential Tenancy Branch because the Tenants had made an Application to dispute the Notice. Therefore, the Landlords

were allowed to amend their Application prior to this participatory hearing for additional unpaid rent, the recovery of a strata fine in the amount of \$50.00 and the recovery of their mailing costs associated with their Application.

Section 2.3 of the Rules of Procedures state that, in the course of the dispute resolution proceeding, if the Arbitrator determines that it is appropriate to do so, they may dismiss or adjourn any unrelated disputes contained in a single Application.

As a result, I determined during the hearing that I would not deal with all the dispute issues placed on the Tenants' and Landlords' Applications in this hearing. Not all the claims are sufficiently related to the main issue of whether or not the tenancy will continue. Therefore, I will deal with the requests to either uphold or cancel the Notice and the Landlords' monetary claim for unpaid rent. However, the parties were given leave to re-apply for the claims not dealt with in this decision as detailed below.

Issue(s) to be Decided

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 and make submissions to me for the issues to be dealt with in this hearing.

- Are the Landlords entitled to an Order of Possession?
- Should the Notice be cancelled?
- Are the Landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agreed that this tenancy started on June 1, 2014 for a fixed term of one year due to end on May 31, 2015. A written tenancy agreement was completed which requires rent to be paid by the Tenants on the first day of each month in the amount of \$1,100.00. The Tenants paid \$550.00 as a security deposit to the Landlords at the onset of the tenancy.

The Landlords testified that the Tenants failed to pay rent when it was due on October 1, 2014. As a result, the Landlords personally served the Tenants with the Notice on October 2, 2014. The Notice was provided in documentary evidence and indicates that the Tenants failed to pay rent in the amount of \$1,100.00 which was due on October 1, 2014.

The Landlords continued to testify that the Tenants had also failed to pay for November, 2014 rent and were also seeking to recover loss of rent for December, 2014 as is alleged that the Tenants had impeded their ability to re-rent the suite for December, 2014. As a result, the Landlords claim a total amount of \$3,300.00 in unpaid rent.

The Tenants testified that they were in the process of moving out of the rental suite but had not provided the Landlords with the keys and vacant possession of the unit at the time of this hearing.

The Tenants testified that they had not paid rent to the Landlords because the Landlords threatened them with acts of violence because they had not paid rent. The Tenants continued to testify that the male Landlords swore at them while on his bike and regularly engaged in verbal insults and abuse towards them for which the police had been notified. The Tenants also explained that they had also not paid rent because they were waiting for the outcome of this hearing.

Analysis

In my analysis of the Notice, I find the contents and the manner in which it was served to the Tenants complied with the Act.

The Tenants applied for more time to cancel the Notice. The Tenants declared on their Application that they received the Notice on October 2, 2014 which was also the day it was served by the Landlords. Therefore, in accordance with Section 47(4) of the Act, the Tenants would have had until October 7, 2014 to make an Application to dispute the Notice or pay the outstanding rent. The Tenants made their Application on October 7, 2014 and therefore, I find that it was made within the time limits and there is no requirement for me to make a determination on the request for more time to dispute the Notice. This aspect of the Tenants' Application is therefore dismissed.

Section 26(1) of the Act provides that a Tenant must pay rent when it is due under a tenancy agreement **whether or not** a Landlord complies with the Act unless the Tenant has a right under the Act to deduct all or a portion of the rent. Section 46(4) also explains that within five days of receiving a Notice, a Tenant may also pay the overdue rent.

Based on the evidence provided by the Tenants as to the reasons why they did not pay rent, I find that the Tenants had no authority under the Act to withhold their rent for October and November, 2014. If a Landlord fails to comply with their obligations in providing the Tenant with a rental suite free from unreasonable disturbance, this does

not give authority for the Tenant to withhold rent until the violation is corrected or as a means to receive compensation for the alleged disturbance. I also find that there is no authority under the Act for the Tenants to withhold rent pending the outcome of a hearing and a Tenant is still required to meet their obligations under the Act in the interim time period between the scheduled hearing.

Therefore, I find that the Tenants breached the Act, and as a result the Notice for cannot be cancelled on these grounds and is thereby upheld.

Based on the foregoing, I find that the Landlords are entitled to an Order of Possession and that the tenancy is to end immediately as the date of vacancy on the Notice for October, 2014 has now passed.

I also grant the Landlords unpaid rent for October and November, 2014 in the amount of **\$2,200.00**. However, the Landlords' Application for loss of December, 2014 rent is dismissed with leave to re-apply as I am unable to determine at this moment in time whether the Landlords will suffer an actual loss for December, 2014 rent.

As the Tenants have failed to cancel the Notice and the Landlords have proved the Notice, I dismiss the Tenants' Application to recover the filing fee and grant the Landlords the recovery of their filing fee. Therefore, the total amount awarded to the Landlords is **\$2,250.00**.

As the tenancy is due to end, the remainder of the issues elected by the Tenants on their Application are now moot points which are hereby dismissed, except for the Tenants' claim for monetary compensation for which I provide leave to re-apply.

The Act does not allow me to award any party costs associated with preparation for a dispute resolution hearing such as mailing costs. Therefore, the Landlords' claim for these costs in the amount of \$25.00 is dismissed.

Conclusion

For the reasons set out above, I grant the Landlords an Order of Possession effective **two days after service on the Tenants**. This order may then be filed and enforced in the Supreme Court as an order of that court.

I also grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$2,250.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court.

The Landlords' Application for mailing costs is dismissed. However, the Landlords have leave to re-apply for December, 2014 loss of rent and for a strata fine, which was not dealt with in this hearing.

As the Tenants have failed to cancel the Notice and the tenancy will be ending, the Tenants' Application is dismissed without leave to re-apply. However, I provide the Tenants with leave to re-apply for monetary compensation for loss under the Act which was an issue not dealt with in this hearing.

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: November 20, 2014

Residential Tenancy Branch

