



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF
 CNR, MNDC, OLC, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing. Each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the landlord will have an Order of Possession on 2 days notice to the tenants, and the tenants withdraw the application for an order cancelling the notice to end tenancy. Further, since the tenancy is ending, I hereby dismiss the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of revenue?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for the landlord's failure to comply with the *Act*?

Background and Evidence

The landlord testified that this tenancy began on April 15, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,250.00 per month is payable in advance on the 29th day of each month, however the parties verbally agreed to the payment of rent on the 1st day of each month when the tenancy agreement was signed.

The landlord further testified that the tenancy agreement required a security deposit to be paid by the tenants in the amount of \$500.00 but the tenants didn't pay it. The tenants paid the landlord \$500.00 on April 12, 2014 but didn't have rent money, so that amount was applied to rent for April, leaving a balance outstanding of \$125.00 for rent. By early May that was paid, but the landlord still didn't receive the security deposit. A few days later, the tenants paid rent for May, 2014.

The landlord also testified that the tenants continued to fall into arrears of rent, and currently owe the landlord \$4,125.00 for September, October, November, 2014, and \$375.00 for August. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by personally handing it to one of the tenants on September 15, 2014. A copy of the notice has been provided and it is dated September 15, 2014 and contains an expected date of vacancy of September 25, 2014 for unpaid rent in the amount of \$1,250.00 that was due on September 1, 2014.

The landlord further testified that when the notice was served, the tenant told the landlord that if the landlord paid the tenants 3 months rent, the tenants would move out. The tenant also mentioned flooding, gyprock and "pcb's." The landlord does not know what the tenant was talking about, but told the landlord that the place is unsafe. The landlord testified that he explained to the tenant that the landlord also lived in the rental unit prior, and there was no concern. The rental unit had new carpets and paint at the commencement of the tenancy.

The first tenant testified that from the moment they moved in, it was a difficult process. The tenants had moved from another community. No security deposit was requested by the landlord.

The tenant further testified that he paid half the rent for September, 2014, and the landlord took half every 2 weeks. The tenants last paid rent in the amount of \$625.00 in cash at the landlord's shop on September 5, 2014, but no receipt was provided. The tenants also paid \$625.00 in August twice on paydays.

The tenant further testified that the electrical work in the rental unit was not done by an electrician and the house had 2 previous fires. When the tenant spoke to the landlord about it, the landlord said he was going to rent it out to another family and laughed. He stated that the rental unit is not safe and the tenants haven't been in the house since October 2, 2014 and have been staying in a motel.

The tenant also testified that on October 20, 2014 the tenant met a contractor at the rental unit. The tenant had called the contractor, and told the landlord, but the landlord didn't attend. The contractor told the tenant that the house is unsafe and dangerous and that the electrical box is illegal, and that the electrical work had been completed without a permit. He said that there are also other issues, such as no insulation in the attic, all drywall had been ripped out and black mold exists under the kitchen sink. The tenant called the fire department, who issued a Compliance Order on October 23, 2014. A copy of the Order has been provided, along with an Electrical Field Check Inspection dated October 23, 2014 showing that the inspection result was a fail and a Compliance Order was issued. He stated that the landlord should not have rented the unit at all. The tenants claim back the money they've paid for rent in addition to moving expenses. Although the tenants still have some belongings in the rental unit, the tenant testified that they only owe rent for half of September.

The second tenant testified that after the tenants had paid rent for half of September, the tenants found burn marks in the basement and became concerned about the safety of the house. They called the landlord, who denied that there were any issues and accused the tenants of making excuses for not paying rent.

In closing, the landlord stated that the rental unit is safe, and if it was not, the fire department would shut down the electrical. It could be a concern and is being dealt with, but the rental unit was safe when it was rented by the tenants, and the tenants agreed to pay rent.

The tenants submit that they have a young family, and this situation has been unfortunate. The Compliance Order proves that the rental unit should not have been rented out.

Analysis

In this case, I find that neither party has complied with the *Act*.

The *Residential Tenancy Act* states that a tenant must pay rent when it is due even if the landlord fails to comply with the *Act*. In this case, the tenants deny that any rent is due for August, 2014 and the notice to end tenancy states that the tenants failed to pay rent in the amount of \$1,250.00 that was due on September 1, 2014 and therefore I

accept that testimony. The tenants also deny owing full rent for September, and one of the tenants testified that the landlord collected \$625.00 on September 5, 2014 at the landlord's place of employment. I am satisfied that the tenants owe \$625.00 for September and that the tenants failed to pay any rent in for October, 2014, and the landlord is owed \$1,875.00.

The tenants testified that they have not stayed in the rental unit since about October 2, 2014, and if the tenants had given notice to vacate the rental unit at that time, the notice would not take effect until November 30, 2014 and therefore, I find that the landlord has established a claim in the amount of \$1,250.00 for loss of revenue.

The *Act* also states that a landlord must provide a rental unit in a state of decoration and repair that complies with the law and makes it suitable for occupation by a tenant. The tenants claim compensation for damages in the amount of all rent paid from the commencement of the tenancy for the landlord's breach of the *Act*. In order to be successful in such a claim, I must be satisfied in the evidence before me that the landlord breached the *Act* or the tenancy agreement which caused the tenants to suffer damages, and I must consider what damages the tenants suffered and what the tenants did to mitigate. I accept the testimony of the tenants that they have not resided in the rental unit for the most part of October, 2014. I also accept the testimony of the parties that the landlord was told of the alleged breach on September 15, 2014, but not in an attempt to have the issues in the rental unit corrected, but the landlord testified that the tenants told him that if the landlord paid the tenants 3 months rent the tenants would move out. The tenants did not dispute that testimony.

I am also satisfied that the only damage suffered by the tenants was fear that the electrical might cause a house fire; the tenants were horrified that the landlord would rent out a unit that was unsafe. The landlord denies that the rental unit was unsafe, and the tenants have provided some evidence of 2 previous fires and a failed electrical inspection, and the tenants moved to a motel. However I also find that the amount claimed is excessive. The tenants' photographs show mold growing under the kitchen sink, in the basement, and carport, and there is some evidence of water egress. The photographs also show that the roof is in need of repair, along with other items, but there is no evidence that the tenants suffered any damages, no illnesses resulting from the condition of the rental unit, no damage to personal property, or any other damages, other than moving.

The tenants have not stayed in the rental unit since before the electrical inspection took place, and I find that the tenants have established recovery of rent for the month of October, 2014. I am also satisfied that the tenants are entitled to moving expenses, which is generally the equivalent of one month's rent, and I so order.

Having found that the landlord is owed \$3,125.00 and the tenant's are owed \$2,450.00, I find it prudent to order that the amounts be set off from one another. Therefore, I grant a monetary order for the difference in favour of the landlord in the amount of \$625.00.

Since both parties have been partially successful with the applications, I decline to order that filing fees be recovered.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby dismissed as withdrawn.

The tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenants, by consent.

I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$625.00.

These orders are final and binding and may be enforced.

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 13, 2014

Residential Tenancy Branch

