



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNC, CNR, MNDC, RR, OPR, MNR, MND, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, a dispute of a rent increase and an order permitting them to reduce their rent and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

The tenants had named their company as an applicant in their application but as their company is not party to the rental agreement, I have stricken the company from the application. The style of cause reflects the amended application.

Issues to be Decided

- Should the notice to end tenancy be set aside?
- Should the tenants be permitted to reduce their rent?
- Has the landlord implemented an illegal rent increase?
- Are the tenants entitled to a monetary order as claimed?
- Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or just before October 5, 2014. The written tenancy agreement states that the tenants were obligated to pay ½ month rent (\$475.00) for October prior to November 1, 2014 and thereafter were to pay \$950.00 per month on the first day of each month. It further states that the tenants only had to pay half of the rent in October and just one quarter of the rent for a damage deposit “in leau of cleaning & painting” (reproduced as written).

The tenants’ rent is paid by the Ministry of Employment and Income Assistance (the “Ministry”). The parties agreed that the landlord received a \$575.00 cheque from the

Ministry on October 30 and that on October 31, she served the tenants with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The Notice states that the tenants failed to pay \$475.00 for October and \$950.00 for November.

The parties further agreed that on October 26, the landlord approached the tenants with a letter titled "Notice of Termination by Landlord" (the "Letter") which purported to end the tenancy. The Letter stated that the tenants are obligated to vacate the rental unit on December 30, 2014. The Letter levelled a number of allegations of tenant misconduct and while the tenants did not agree with those allegations, the parties agreed that they discussed the end of tenancy and negotiated an extension, from November 30 to December 30. The tenants testified that they told the landlord they would agree to vacate on December 30 but asked the landlord if she would be willing to reconsider allowing them to stay at the end of December.

The parties agreed that the rental unit required significant cleaning and re-painting. The landlord took the position that she compensated the tenants for performing this cleaning by reducing their rent for October by one half and only requiring \$237.50 for a security deposit when she could have asked for \$475.00. The tenants claimed that in addition to this compensation, the landlord agreed to allow them to work off their rent rather than pay the full amount of rent. The landlord denied having entered into any additional agreement.

The landlord seeks an order of possession based either on the Notice or the Letter. She further seeks a monetary order for \$1,425.00 as she should have received a total of \$2,375.00 in rent as of the date of this hearing (\$475.00 for October and \$950.00 for each of the months of November and December) but has only received \$950.00 (\$575.00 in October and \$375.00 in November).

The tenants agreed that the landlord has only received \$950.00 to date but argued that they had worked off much of that debt and that a problem with the Ministry had led their rent cheque being sent to a previous landlord.

The tenants seek to be compensated for the work they have performed on the rental unit and claim that they have made significant repairs, some of which are emergency repairs. The landlord testified that she did not agree to compensate the tenants beyond what is reflected in the tenancy agreement and disputed that the repairs may be characterized as emergency repairs.

The tenants did not provide evidence on their claims disputing a rent increase or reducing their rent.

Analysis

The tenancy agreement is a binding document which reflects the agreement of the parties at the time the tenancy began. I find that the agreement clearly states that October's rent was due prior to November 1 and that the amount of October's rent and the security deposit were reduced to compensate the tenants for work done to the property and I find insufficient evidence to show that the parties had an agreement that the tenants could further reduce their rent. I find that the tenants were obligated to pay \$475.00 prior to November 1 and \$950.00 per month in rent for each month thereafter.

The landlord can only issue a 10 day notice to end tenancy for unpaid rent when rent remains unpaid after it is due. In this case, the only rent that was due prior to November 1 was \$475.00 for October. I find that the landlord had \$575.00 in rent from the Ministry in her hands when she issued the Notice and therefore the Notice is void from the outset. The Notice is therefore set aside and of no force or effect.

I find that the tenants still owe the landlord \$1,425.00 in rent for November and December and I award the landlord this sum. I further find that as the landlord has been substantially successful in her claim, she should recover her \$50.00 filing fee for a total entitlement of \$1,475.00. I grant the landlord a monetary order for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Turning to the tenants' claim, I find that the tenants voluntarily entered into an agreement with the landlord to end the tenancy on December 30, 2014. I have arrived at this conclusion because the parties agreed that there was discussion on the topic which resulted in the landlord extending the end of tenancy date on the Letter to a date the tenants found acceptable. For this reason, I find that the tenancy will end on December 30, 2014 and I grant the landlord an order of possession effective on that date.

I find insufficient evidence to prove that the repairs undertaken by the tenants were emergency repairs and I find that the tenants agreed to the amount of compensation to which they were entitled when they signed the tenancy agreement. I therefore dismiss their claim for a monetary order as I find they have been adequately compensated for their work and there is no agreement between the parties for further compensation.

I dismiss the balance of the tenants' claims as the tenancy will be ending and the issues are now moot. Further, there is no evidence that a rent increase, illegal or otherwise, has taken place.

Conclusion

The tenancy will end on December 30, 2014 and the landlord is granted an order of possession. The landlord is granted a monetary order for \$1,475.00. The tenants' claim 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: December 12, 2014

Residential Tenancy Branch

