



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNR, MNSD, OPR, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have put on the applications. For claims to be combined on an applications they must related.

Not all the claims on these applications are sufficiently related to the main issue to be dealt with together.

I therefore will deal with whether or not to cancel or uphold the Notice to End Tenancy, and whether or not issue an order for any outstanding rent. I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

This tenancy began September 17, 2013 with the monthly rent of \$1400.00.

The landlord testified that:

- The tenants failed to pay the full January 2015 rent, and therefore on January 27, 2015 a 10 day Notice to End Tenancy was issued, as \$350.00 in rent was still outstanding.
- The outstanding rent was not paid until February 3, 2015, and at that time a receipt was issued for use and occupancy only.
- The tenants have also now failed to pay a portion of the February 2015 rent, and as of today's date there is \$700.00 in rent outstanding.
- She is asking for an Order of Possession for as soon as possible, and a monetary order for the outstanding February 2015 rent.

The tenants testified that:

- They did not pay the full January 2015 rent as one of the co-tenants had died and they had not been able to bring in another tenant because there had been a sewage flood in the rental unit they had to deal with.
- Therefore, there was \$350.00 rent outstanding for the month of January 2015; however they have since covered that outstanding rent with a cheque from the ministry for \$350.00 that was issued for February 2015 rent. That cheque was given to the landlord on January 30, 2015, although it may have been dated for February 3, 2015.
- They believe that the Notice to End Tenancy should be canceled as the full January 2015 rent has now been paid, and it probably would have been paid on time if the flood had not occurred.
- They admit that the full February 2015 rent has not been paid, however it's because they are still waiting for a cheque from welfare for one of the cotenants.
- They do not believe that they owe \$700.00 for February 2015, as the landlord has been given 3 February 2015 cheques, plus it was not their fault that they were unable to bring in a new cotenant in January, because of the sewage flood.

Analysis

There is only one tenancy agreement in place and all the cotenants are on that one tenancy agreement, and therefore the full rent is still due even if one tenant dies, or leaves the rental unit.

In this case, one of the cotenants died and the other tenants are claiming they were unable to bring in a new cotenants due to a septic flood in the rental unit, and therefore the full January 2015 rent was not paid.

Section 33 of the Residential Tenancy Act only allows tenants to deduct money from the rent if they have paid for emergency repairs as defined by the Residential Tenancy Act, have provide the landlord with receipts for those repairs, and the landlord has failed to pay those receipts.

In this case however, the tenant have supplied no information to show that they paid for any emergency repairs to the rental unit, or that they provided the landlord with any receipts for any emergency repairs made to the rental unit .

Therefore it is my finding that the tenants did not have the right to withhold any rent, and the full January 2015 rent was required to be paid for the month of January 2015.

Therefore under section 46 of the Residential Tenancy Act, the landlord did have the right to serve a Notice to End Tenancy for failure to pay \$350.00 of the January 2015 rent.

Further it is my finding that that outstanding rent was not considered paid until February 3, 2015, as the cheque was dated for that date.

It is also my finding that the landlords have not re-establish the tenancy, as the receipt given for the February 3, 2015 payment was given for use and occupancy only.

I therefore will not cancel the Notice to End Tenancy and will be issuing an Order of Possession to the landlord.

Further, it is my finding that as of today's date there is still a total of \$700.00 in rent outstanding, because although three cheques were given to the landlord, one of those cheques as stated above is applied to the outstanding January 2015 rent, and the others were also accepted for use and occupancy only.

I therefore also allow the landlords request for a monetary order for the outstanding February 2015 rent.

I also allow the landlords request for recovery of the \$50.00 filing fee.

Conclusion

As stated above the claims by both the landlord and the tenant for damages are dismissed with leave to reapply.

The tenants request to cancel a Notice to End Tenancy is dismissed without leave to reapply.

I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

I have issued a monetary Order for the tenants to pay \$750.00 to the landlord.

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: February 16, 2015

Residential Tenancy Branch

