



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was convened in response to applications filed under the Residential Tenancy Act, (the “Act”) by the tenants and the landlord.

The tenants’ application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
1. To dispute an additional rent increase; and
2. To recover the cost of filing the application.

The landlord’s application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

Both parties appeared, gave 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 make submissions at the hearing.

Preliminary matter

At the outset of the hearing the landlord stated FP is not a tenant listed in the tenancy agreement. FP stated he is a tenant and that he negotiated the contract, but was not present to sign the agreement. After a lengthy discussion on this issue the parties agreed that tenant YC and FP will both be listed as tenants on the respective applications. Accordingly I have amended the style of cause as stated above.

At the outset of the hearing the parties agreed that the tenants have vacated the premises. Therefore, I find there is no requirement for me to hear the tenants issue to cancel a notice to end tenancy or the landlord issue for an order of possession.

Issues to be Decided

Should the additional rent increase be cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Filed in evidence is the written tenancy agreement signed by the parties. The agreement stated that the tenancy commenced on October 15, 2014. Rent in the amount of \$2,300.00 was payable on the first day of each month. The tenants paid a security deposit of \$1,150.00.

Tenants' application

The tenant FP testified that he and his wife are residents of China, and that they were negotiating the rent with the landlord by email. FP stated that when they agreed to rent the premises rent was \$1,850.00 per month as per the application for tenancy signed by him on August 16, 2014.

The tenant FP testified that when his wife arrived in Canada, the landlord changed the terms of the agreement and his wife signed the tenancy agreement to pay rent in the amount of \$2,300.00 per month.

The landlord testified that when she was negotiating the rent with FP, it was based on two people residing in the premises, which were to be the tenant YC and her son. However, later she discovered that the tenant YC's parents would also be moving into the premises and increasing the number of people to four, rather than the two that was initially disclosed at the start of the discussions.

The landlord testified that this was discussed with the tenant YC prior to signing the agreement and it was agreed that rent would be \$2,300.00 per month and a security deposit of \$1,150.00 was paid. The landlord testified that after YC's parents move-out of the premises at the end of November 2014, she agreed to verbally reduce the rent to \$1,950.00 per month, which included the utilities, commencing December 1, 2014.

Landlord's application

The landlord testified the tenants failed to comply with the tenancy agreement by failing to pay rent as follows:

- November 2014, rent of \$2,300.00 was short \$350.00 as the tenants paid \$1,950.00;
- December 2014, rent of \$1,950.00 was paid as agreed;
- January 2015, rent of \$1,950.00 was short \$1,000.00, as the tenants paid \$950.00;
- February 2015, rent of \$1,950.00 was short \$1,605.00, as the tenants paid \$345.00.

The tenant FP testified that November 2014, rent was short \$350.00 as they believed that they overpaid the security deposit because the security deposit should have been based on the original amount of \$1,850.00, and they deducted this overpay from the rent.

The tenant FP testified that they paid \$950.00 rent for January 2015, because they applied their security deposit.

The tenant FP testified that they paid \$345.00 rent for February 2015, as they were only living in the residence for 8 days and should on be required to pay prorated rent.

Analysis

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

Tenants' application

Although the parties were negotiating rent by email and an application for tenancy was submitted, that was prior to signing the tenancy agreement. It appears by the submissions of both parties that they had a different understand of the terms that were being negotiated.

On October 15, 2014, the tenant YC, in person, entered into a written contract with the landlord, the rent was negotiated and specified in the written agreement and the tenancy commenced. I find that the tenancy agreement is binding on both parties, as either party had the option of not signing the agreement.

As the rent was established under the tenancy agreement on October 15, 2014, in the amount of \$2,300.00, I find the tenants have failed to prove the landlord has violated the Act as there was no rent increase after the tenancy commenced. In fact the rent was

reduced to \$1,950.00, commencing December 1, 2014, although there was no requirement under the Act, for the landlord to make this reduction. Therefore, I dismiss the tenants' application to cancel an additional rent increase.

As the tenants were not successful with their application, the tenants are not entitled to recover the filing fee from the landlord.

Landlord's application

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

The evidence of the tenant was that they withheld **\$350.00** from November 2014, rent, because they felt they overpaid the security deposit. They withheld **\$1,000.00** from January 2015, rent because they used their security deposit to offset rent. They withheld the amount of **\$1,605.00**, as they felt they were entitled to a prorated rent as they vacated the rental unit on February 8, 2015.

However, the tenants did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so.

Under the Act the tenants are not entitled to offset the rent with the security deposit unless the tenants have the written permission from the landlord to do so. In this case, the tenants did not have the consent of the landlord.

Furthermore, regardless of when the tenants vacated the premises, such as in this case on February 8, 2015, there is no provision under the Act that entitled the tenants the right to pay prorated rent. Rent is due under the terms of the tenancy agreement.

I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord.

I find that the landlord has established a total monetary claim of **\$3,005.00** comprised of unpaid rent as described above and the **\$50.00** fee paid for this application.

I order that the landlord retain the security deposit of **\$1,150.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,855.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed.

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 23, 2015

Residential Tenancy Branch

