



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD

Introduction

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

The landlord’s application is seeking orders as follows:

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

The tenants’ application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”);
2. For a monetary order for money owed or damages or loss under the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed 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.

I note the landlord’s application filed on February 13, 2015, was seeking several issued of dispute, including damages to the rental unit, however, the tenancy had not ended and no amount was claimed for damages at the time of filing.

On February 25, 2015, the landlord filed evidence and in that evidence is monetary amount claimed for damages. However, the landlord’s application was not amended in accordance with the Residential Tenancy Branch Rules of Procedures and no additional filing fee was paid as the monetary claim had increase to an amount over \$5,000.00.

Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings and the principles of natural justice require that a person be informed and given particulars of the claim against them. Therefore, I find it appropriate to dismiss the landlord's claim for damages with leave to reapply.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the both parties have indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the landlord's application for an order of possession and a monetary order for unpaid rent. The balances of their respective claims are dismissed, with leave to reapply.

Issues to be Decided

Should the Notice issued on February 2, 2015, be cancelled?
Is the landlord entitled to order of possession?
Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The tenancy began on July 1, 2014. Rent in the amount of \$2,800.00 was payable on the first of each month. A security deposit of \$1,400.00 was paid by the tenants.

At the outset of the hearing the parties agreed that the tenants vacated the rental premises on February 13, 2014, as that was the effective vacancy date of the Notice. Since the tenants have vacated the premises, I find it not necessary for me to consider the tenants' application to cancel the Notice or the landlord's application for an order of possession.

The landlord testified that at the start of the tenancy the tenants were given a \$500.00 rent reduction to purchase a new dishwasher. The landlord stated that the tenants did not purchase the appliance and therefore, she is entitled to recover unpaid rent for July 2014, in the amount of \$500.00.

The landlord testified that the tenants failed to pay any rent for February 2015, and were residing in the rental unit when rent was due under the terms of the tenancy agreement. The landlord seeks to recover unpaid rent for February 2015, in the amount of \$2,800.00.

The tenants testified they never received a rent reduction of \$500.00 from the landlord to purchase a new dishwasher. The tenant stated that on page two of the tenancy agreement shows there was a discussion about replacing the appliances, but no agreement was made.

The tenants testified that they did not pay rent for February 2015, because the roof of the garage collapsed due to the heavy snow pack. The tenants stated that they believed they could deduct what they thought was fair compensation for the loss of use of the garage and for their loss of belongings as they did not have insurance on their belongings.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

In this case, the parties have provided a different version of events as to whether the tenants received a rent reduction of \$500.00 to purchase a new dishwasher in July 2014. I find the landlord has failed to meet the burden of proof as there was no documentary evidence, such a rent receipt for July 2014, to support the tenants were give a rent reduction of \$500.00. Therefore, I dismiss the landlord's claim for unpaid rent for July 2014, due to insufficient evidence.

The evidence of the tenants was that they did not pay rent due on February 1, 2015, as they felt they were owed compensation from the landlord due to the roof of the garage collapsing under heavy snow pack. 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. 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. Therefore, I find the landlord is entitled to recover unpaid rent for February 2015, in the amount of **\$2,800.00**.

I find that the landlord has established a total monetary claim of **\$2,850.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,400.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,450.00**.

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

Conclusion

The tenants vacated the premises on the effective date of the Notice. Therefore, it was not necessary for me to consider the tenants' application to cancel the Notice or the landlord's application for an order of possession.

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

The balances of their respective applications are dismissed with leave to reapply.

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: March 13, 2015

Residential Tenancy Branch

