



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LIFERAFT VENTURES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants – CNR, CNL, MT, FF, O

For the landlord – OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for more time to file an application to cancel a Notice to End Tenancy; to cancel a 10 Day Notice to End Tenancy for unpaid rent; to cancel a Two Month Notice for landlord's use of the property; other issues; and to recover the filing fee from the landlord for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenants' security and pet deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing and gave sworn testimony. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to more time to file an application to cancel the Notices to End Tenancy?
- Are the tenants entitled to cancel the 10 Day Notice to End Tenancy?
- Are the tenants entitled to cancel the Two Month Notice to End Tenancy?
- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep all or part of the security and pet deposits?

Background and Evidence

The parties agreed that this tenancy started on February 15, 2011 for a fixed term tenancy of one year. The tenancy has been extended for further one year terms and is now a month to month tenancy. Rent for this unit is \$1,350.00 per month due on the 1st of each month. The tenants paid a security deposit of \$675.00 and a pet deposit of \$400.00 on February 02, 2011.

The landlords testified that they had served the tenants with a Two Month Notice to End Tenancy for landlords' use of the property on December 29, 2014. This was posted to the tenants' gate and informed the tenants that the landlords have all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. This Notice has an effective date of February 28, 2015.

The landlords testified that the tenants also owed rent for the following amounts:

November 01, 2011 - \$300.00

December 01, 2011 - \$1,350.00

January`01, 2012 - \$1,150.00.

The tenants did make an extra payment of \$100.00 towards the outstanding rent leaving an outstanding balance from 2012 of \$2,700.00. Since that time the tenants have also failed to pay all the rent as follows:

November 01, 2014 - \$350.00

December 01, 2014 - \$650.00

January 01, 2015 - \$550.00

February 01, 2015 - \$350.00

March 01, 2015 - \$350.00

April 01, 2015 - \$1,350.00

The total amount of unpaid rent is now \$6,300.00.

The landlords testified that they had reached a mutual agreement to end the tenancy on March 31, 2015. In this agreement the tenants agreed to vacate the unit by March 31, 2015, to leave the unit in a good condition and to pay the outstanding rent owed at that time of \$4,600.00. It was also agreed that the tenants would not have to pay rent for the last month of March, 2015 of \$1,350.00. This agreement was amended by the parties to extend the move out date to April 30, 2015 providing prior written notice (two weeks) is given to the landlords and the landlords and tenants agree to arrange a payment schedule for the outstanding amount (\$2,700.00) prior to vacating.

The landlords testified that the tenants did not make any payments towards the rent arrears and did not arrange a payment schedule for the arrears. Therefore the mutual agreement became null in void. The landlords therefore served the tenants with the 10 Day Notice to End Tenancy on March 11, 2015 by registered mail. This Notice informed the tenants that they had five days to pay the outstanding rent of \$4,950.00 or dispute the Notice or the tenancy would end on March 26, 2015.

The landlords seek an Order to uphold the 10 Day Notice to End Tenancy and seek a Monetary Order to recover the unpaid rent of \$6,300.00 plus the \$100.00 filing fee. The landlords request an Order to keep the security and pet deposit of \$1,075.00 to offset against the unpaid rent.

The tenants do not dispute that they owe rent; however, the tenants testified that they should not have to pay rent for March, 2015 as specified in the mutual agreement to end the tenancy. The tenants understand that the landlords are entitled to an Order of Possession for unpaid rent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Act* states:

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 tenants do not dispute that they owe some rent and rely on the terms of the mutual agreement to end the tenancy that they did not have to pay rent for March, 2015. However, the mutual agreement lays down some specific terms one being that the tenants must pay the outstanding rent that was owed at that time of \$4,600.00 and that they would arrange a payment schedule with the landlords to pay off the outstanding rent. The tenants did not abide by the terms of this mutual agreement and therefore I am satisfied that the mutual agreement has become null in void.

I am satisfied that the tenants now owe rent of \$6,300.00 and I Order the tenants to pay that amount to the landlords. I uphold the landlords request to keep the security and pet deposit to a total amount of \$1,075.00 and I have offset this amount against the outstanding rent.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$100.00** from the tenants pursuant to s. 72(1) of the *Act*. The landlords will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Unpaid rent	\$6,300.00
Filing fee	\$100.00
Less security and pet deposits	(-\$1,075.00)
Total amount due to the landlords	\$5,325.00

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The 10 day Notice was received by the tenants on March 16, 2015. The tenants did not pay all the outstanding rent within five days and although the tenants did dispute the Notice within five days they have agreed that they still owe an amount for rent.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As this date has since passed I grant the landlords an Order of Possession pursuant to s. 55 of the *Act*.

As the tenancy will end pursuant to the 10 Day Notice I am not required to deal with the tenants' application to cancel the Two Month Notice to End Tenancy.

As the landlords are successful in upholding the 10 Day Notice the tenants' application to cancel this Notice is dismissed.

The tenants must bear the cost of filing their own application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$5,325.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the Respondents. If the Respondents fail to comply with the Order, the Order is enforceable through the Provincial Court as an Order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective two days after service upon the Respondents. This Order must be served on the Respondents, if the Respondents fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: April 29, 2015

Residential Tenancy Branch

