



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, FF
MT, CNC, CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The tenants' amended application seeks more time to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenants.

Both landlords and both tenants attended the hearing, and all parties gave affirmed testimony.

The parties also provided evidentiary material, however some evidence of the tenants was not received by me prior to the hearing, being photographs and text messages although the tenants advised that it had been provided to the Residential Tenancy Branch well within the time required. The landlords did not raise any issues with respect to receipt of a copy of the evidence. The parties were assured that no Decision would be made until all evidence properly filed had been received by me. The parties were given the opportunity to question each other about the evidence and testimony provided. All evidence has been received prior to this written Decision, which has been reviewed and all evidentiary material is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for unpaid rent?
- Should the tenants be permitted more time to dispute a notice to end tenancy?
- Should the notice to end tenancy for unpaid rent be cancelled?
- Should the notice to end tenancy for cause be cancelled?
- Have the landlords established a monetary claim for unpaid rent?

- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlords' failure to provide a clean rental unit and make repairs?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on December 15, 2014 and the tenants still reside in the rental unit. Rent in the amount of \$1,100.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$550.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenants have been late paying rent consistently throughout the tenancy. The landlords served the tenants with a 1 Month Notice to End Tenancy for Cause during the first week of March, 2015 stating that the tenants had to vacate by the end of April, 2015 for repeated late rent. A copy of the notice has been provided. The tenants didn't pay any rent for April, 2015 so the landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has also been provided. The notice is dated April 2, 2015 and contains an expected date of vacancy of April 11, 2015 for unpaid rent in the amount of \$1,100.00 that was due on April 1, 2015.

The tenants are now in arrears of rent for April and May, 2015 totalling \$2,200.00.

After the notices were issued, the tenants raised all sorts of things about the condition of the rental unit that have never been raised before and were never a problem until the tenants continually paid rent late. The landlord had agreed to fix the patio door in the new year but no time frame other than that was discussed.

The second landlord testified that she was present when a friend served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by handing it to one of the tenants, and a Proof of Service document has been provided. The landlord also stated that she was mistaken, and that she had served the notice herself on April 2, 2015 by handing it to one of the named tenants, with the friend witnessing it.

No rent has been received since the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The first tenant testified that the parties met in November, 2014 prior to entering into a tenancy agreement, and there were some issues with the rental unit. The tenants had already given notice to vacate their previous rental unit. The landlords promised to paint the rental unit, make some repairs, and one of the main issues was the patio door. The door itself was not the correct door and wouldn't latch. The landlords wanted to wait until the new year for tax

purposes to fix it, and the tenants believed that meant in January, however the repair wasn't made until February 24, 2015.

The tenant further testified that the landlords did some minor repairs during the tenancy, but not all, and the tenant had to do some himself. The furnace ducts were very dirty and the dishwasher still leaks.

The landlords had agreed that the tenants would pay half of the rent for January at the beginning of the month and the other half as soon as possible, which was paid on January 9, 2015. The hydro was high due to the faulty patio door so the tenants withheld rent for February and the landlords agreed that the tenants could pay half of the rent at the beginning of February and the other half when the door was fixed. The door was fixed on February 24, 2015 and the tenants paid the balance of rent due that day.

Rent for March was only a day late, however the tenants have not paid any rent for April or May and the tenants feel the landlords have cheated the tenants and really want to move into the rental unit, and there's a process for that.

The tenants' evidentiary material contains numerous text messages exchanged between the parties which discuss unpaid rent and required repairs. Also provided are photographs labelled showing a bi-fold door which is not secured, a plastic bag covering an open pipe from the furnace, items found under the washing machine (feces, cigarette butt and a sock), vents that required cleaning, mold around windows, a clogged furnace filter, a loose kitchen cabinet door, imperfect wall paper, and a broken light switch.

The tenants seek damages in the amount of \$5,000.00 and more time to dispute the notices because evidence to support the claim was not available sooner. The tenants also request that both notices given by the landlord be cancelled.

The second tenant testified that the parties had the conversation about paying January's rent in portions, which took place on December 16, 2014, the day after the tenants moved in.

In February, 2015 the tenants found out from the strata that the door has been a problem for a long time. A copy of a letter from the strata has been provided.

The tenant further testified that the tenants advised the landlord of repairs required to the rental unit. The door was a danger because it left the rental unit unsecured and caused heat costs to be expensive; there was a 1 inch gap. The tenants didn't think it would be necessary to file an application for dispute resolution believing the landlords would deal with it. Rent would have been paid if the landlords had done what they should have, and the tenants would not have moved in if they thought the landlords weren't going to do the repairs.

Analysis

The *Residential Tenancy Act* requires a landlord to provide and maintain rental accommodation that is suitable for occupation by a tenant and to make required repairs. However, the *Act* also states that a tenant must pay rent even if the landlord has failed to comply. In this case, the tenants admit that they have withheld rent. The tenants had an alternate method of dealing with the repairs, and that was to apply for dispute resolution and continue to pay rent.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Act*. The tenants did not dispute the testimony of one of the landlords that it was personally served to one of the tenants on April 2, 2015. The tenants did not pay the rent, did not move out of the rental unit by the expected date of vacancy, have fallen further into arrears, and I find that the landlords are entitled under the *Act* to an Order of Possession on 2 days notice to the tenants.

I also find that the tenants owe the landlords rent for the months of April and May, 2015 totalling \$2,200.00.

Although the *Act* does not permit a tenant to withhold rent even if the landlord fails to comply with the *Act* or the tenancy agreement, the tenant may still make an application for dispute resolution for damages that result from that failure, or for an order that rent be reduced for repairs, services or facilities agreed upon but not provided. In this case, the tenants claim \$5,000.00 as compensation for the landlords' failure to comply. I have reviewed the photographs, text messages and other evidentiary material, and I am satisfied that the rental unit was not in pristine condition at the beginning of the tenancy. However, the only evidence before me that the tenants made requests for repairs is in the text messages, some of which are not dated, and the testimony of the parties respecting conversations. It's clear that the patio door needed repair prior to the commencement of the tenancy, and the tenants testified that the heat bill was increased but the tenants have not provided any evidence respecting the amount of the bills before or after the repair. The parties also agree that it was repaired February 24, 2015 which was about 10 weeks into the tenancy. I find that the tenants have established a nominal monetary claim in the amount of \$50.00 per month from December 15, 2014 to February 24, 2015, totalling \$125.00.

With respect to the dishwasher repair, I am satisfied from the text messages that it wasn't repaired until after the patio door was repaired, and the tenants agreed to that. I am satisfied that it leaked, and perhaps is still does, but it is not clear whether or not the tenants were able to use it, or how it may have affected the tenancy.

With respect to the other repairs and cleaning claimed, I find that the tenants have failed to establish how they affected the tenancy or what the tenants did to mitigate any loss or damages suffered.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fee.

Having found that the tenants are in arrears of rent the sum of \$2,200.00 and the landlords owe \$125.00 to the tenants, I find it necessary to set-off the amounts and I grant a monetary order in favour of the landlords for the difference in the amount of \$2,075.00.

The landlords have not applied to keep the security deposit and I leave it to the parties to deal with it in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlords as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,075.00.

These orders are final and binding and may be enforced.

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: May 19, 2015

Residential Tenancy Branch

