



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with application by the tenants and by the landlord. The tenants applied to cancel a 10 day Notice to End Tenancy for unpaid rent. The landlord applied for an order of possession and a monetary order. The hearing was conducted by conference call. The landlord and the tenants called in and participated in the hearing.

Issues

Should the Notice to End Tenancy dated April 14, 2015 be cancelled?
Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order?

Background and Evidence

The rental unit is a house in Maple Ridge. This tenancy began on November 1, 2013. The rent is \$1,700.00.00 due in advance on the first day of each month. The tenants did not pay a security deposit at the start of the tenancy. The tenants did not pay rent for April when it was due. On April 14, 2015 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the rental unit on April 15th. The tenants applied to dispute the Notice to End Tenancy. They claimed in their application that they withheld rent due to emergency repairs not made. They said the furnace was broken and not fixed and a washer was broken and not fixed. The tenants did not provide documents to show that they had performed any emergency repairs or that they had expended any money on repairs. The tenants provided a written submission wherein they said they were seeking a rent reduction for renovation work they claimed to have performed. The tenant said he had receipts that he could provide, but he did not submit any such documents. The tenants have not paid rent for April, May or June. The landlord testified that he performed repairs to the heating system and the dishwasher; he produced receipts for the work. The landlord testified

that the tenant has told him that he was not going to pay the rent and it would take several month for the landlord to succeed in evicting him; the tenant told the landlord that he has played the game before and has nothing to lose.

Analysis

The *Residential Tenancy Act* provides by section 26 (1) that 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 *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any emergency repairs and there has been no rent increase since commencement of the tenancy. The tenants have not paid any rent for April or May and they have not established that they have any basis for withholding rent payments and I find that they have not provided evidence of any ground that would excuse them from their obligation to pay rent. The tenants' application to cancel the 10 day Notice to End Tenancy for unpaid rent is therefore dismissed without leave to reapply.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit - I find that the landlord has established a total monetary claim of \$3,400.00 for the outstanding rent for April and May. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$3,450.00

and I grant the landlord an order under section 67 in the said amount. This order may be filed in the Small Claims 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: June 03, 2015

Residential Tenancy Branch

