



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, cnr, opr, md, mnr, mnsd, mndc, ff

Introduction

The female tenant applies for an order cancelling a 10 Day Notice to End Tenancy (for unpaid rent or utilities), and for a monetary order related to a damaged recreational vehicle (RV).

The landlord requests an Order of Possession, a Monetary Order, and an order to retain the security deposit.

Issues to Be Decided

- Is money payable by the landlord to the tenants related to the damaged RV?
- Is the 10 Day Notice to End Tenancy effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenants to the landlord?
- If so, is the landlord entitled to retain the deposit in partial satisfaction of the amount owing?

Background and Evidence

This tenancy began July 10, 2011, with both tenants signing the written tenancy agreement. Rent was due on the 1st day of each month in the amount of \$1,400.00. A security deposit of \$1,400.00 was paid at the start of the tenancy. The tenants were served a 10-Day Notice to End Tenancy on May 20, 2015, given for non-payment of rent. The female tenant filed a dispute of that notice immediately upon receiving it. She does not dispute that rent is unpaid, but submits that it was her co-tenant who was responsible to pay it. The landlord's ledger confirms that as of May 31, 2015, the balance owing in rent was \$5,100.00, and since then a further \$2,800.00 of rental arrears has accrued and is claimed. No rental payments have been received by the landlord since the tenants were given the 10 Day Notice.

As a result of a serious wind storm in October, 2014, a tree fell onto the tenants' RV. The tenant alleges the damage to the RV was \$8,500.00. She contends a neighbour had previously warned the landlord that the tree was dangerous. The landlord replies he is not responsible for the tenant's personal property, and in any event that he had trimmed the tree prior to it falling, which was due to the serious wind storm and not his negligence. He further states that the tenant should have insured the RV, and that it was not authorized to be parked where it was.

Analysis

The tenancy agreement signed by both tenants is clearly one that makes the tenants jointly and severally liable for payment of the rent. Although the male tenant was the one who always paid the rent, the female tenant at all times remained equally liable for the rent under this agreement, and the landlord is within his rights to pursue rental arrears as against her.

Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenants were required to pay their rent on the first day of each month, and I accept the landlord's evidence that the rent fell seriously into arrears. The landlord was therefore entitled in law to serve the 10 Day Notice ending this tenancy. Upon receipt of that notice, the tenants should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenants failed to do so. The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to cancel the Notice is dismissed.

The landlord is entitled to an award of \$7,900.00 representing the claimed rental arrears, plus \$50.00 as recovery of the landlord's filing fee. The landlord may retain the security deposit in partial satisfaction of the award.

The tenant has failed to prove on a balance of probabilities that the landlord should be found liable for damage that occurred to her RV when a tree fell onto it. I note that the tenant's allegation that the landlord knew the tree is dangerous is based upon a neighbor apparently having advised the landlord of problems with the tree. I assigned little weight to this evidence, as it is of a hearsay nature. Further, I accept the landlord's testimony that he had trimmed the tree prior to the storm that generated unusually high and unforeseeable winds. More significantly, section 7(2) of the Residential Tenancy Act requires that a party claiming compensation must do whatever is reasonable to minimize loss of damage, and in this case a clear reasonable step would have been to

insure her vehicle against damage. For these reasons, I dismiss the tenant's claim as against the landlord for compensation for the damaged RV.

Conclusion

Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$7,950.00, representing the rental arrears and the recovery of the filing fee. The security deposit totals \$1,400.00, and I order pursuant to section 38(1)(d) that the full amount of the deposit be retained, in partial satisfaction of the monetary award noted above. I further order that the remaining balance of the award due to the landlord, equalling \$6,550.00, be paid immediately.

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: July 07, 2015

Residential Tenancy Branch

