



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, ERP, OPR, OPC, MND, MNSD, MNDC, FF

Introduction

In the first application the tenants seek to cancel a one month Notice to End Tenancy for cause received June 2, 2015. They also seek an order that the landlord comply with the law and for an order that the landlord conduct emergency repairs.

In the second application the landlord seeks an order of possession pursuant to the one month Notice and pursuant to a ten day Notice to End Tenancy served June 8, 2015. She also seeks compensation for damage or loss and to retain the security deposit.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home. The tenancy started March 1, 2015. There is no written tenancy agreement.

The tenants say the rent is \$700.00 per month and that the landlord holds a \$400.00 security deposit. The landlord says the rent is \$800.00 and that she holds a \$300.00 security deposit.

The one month Notice claims that the tenants 1) are repeatedly late paying rent, 2) have significantly interfered with or unreasonably disturbed the landlord, 3) have engaged in illegal activity that has, or is likely to damage the landlord's property, 4) have caused

extraordinary damage to the rental unit, 5) have not done required repairs of damage, and 6) have knowingly given false information to a prospective purchaser or tenant.

The landlord provided no details or particulars of any of these allegations before the hearing.

The ten day Notice claims that the tenants failed to pay \$800.00 rent due June 1, 2015. It is agreed that no money has been paid to the landlord since receipt of the ten day Notice on June 8th.

The landlord claims that there are too many people in the rental unit. Since the tenants and their young child moved in with Mr. D.'s mother, Ms. D.'s mother has moved in, Mr. D.'s father has moved in and the tenants have had another child.

The rent includes utility costs and so the landlord is concerned with increased expenses resulting from so many people.

The landlord's representative says that in May the tenants were given an option to pay \$1000.00 a month or move out.

The landlord's representative relates that the tenants have been late paying rent "three or four months" and that they are creating a disturbance. They have broken a fence and dented the garage door with a soccer ball.

Mr. K. for the tenants relates that in April the rent was increased to \$800.00 by agreement to account for an additional person.

On June 1, Mr. D. went to pay the \$800.00 but the landlord demanded \$1000.00. He therefore refused to pay anything. He quickly received the one month Notice and then the ten day Notice. There was no attempt to pay rent after receiving the ten day Notice.

Mr. K. relates that the landlords cut off the power to the suite. The tenants called the police and the power was restored, only to be cut again. He says the tenants were without power from June 2 to June 12.

The landlord's representative says the power was only cut off for two hours because of a breaker failure. He refers to an electrician's invoice for a breaker repair dated June 6.

Analysis

The rent is \$800.00 per month, as admitted by the tenants' representative.

A security deposit was paid. Normally, receipt of deposit money is confirmed in the standard form tenancy agreement. It is a landlord's responsibility to make a written tenancy agreement with her tenants. It is the law under s. 13(1) of the *Residential Tenancy Act* (the "*Act*"). The tenants are without a deposit receipt because of the landlord's failure to follow the law. I determine that the landlord holds a \$400.00 deposit, as alleged by the tenants.

The ending of a tenancy is a very serious matter. A landlord will be required to provide clear and cogent evidence of grounds justifying eviction. However, I need not go into detail regarding the one month Notice to End Tenancy for cause, because the ten day Notice has resulted in this tenancy coming to an end.

Section 46 of the *Act* specifies that a tenant receiving a ten day Notice to End Tenancy has a five day period to either pay the amount demanded in the Notice (\$800.00 in this case) or make an application to cancel the Notice. The tenants have done neither in this case. Section 46 states that if a tenant fails to take either of those steps then he or she is conclusively deemed to have accepted the end of the tenancy ten days after service of the Notice.

As the result, this tenancy has ended by operation of the ten day Notice and the landlord is entitled to an order of possession.

The landlord has not made out a claim for damages of any kind and so this item of the claim is dismissed.

There is no claim for unpaid rent.

The tenants' representative's second hand evidence about power loss is at odds with the landlord's representative's second hand evidence on the subject and I find no basis upon which to conclude one's testimony is any less credible than the other's. The burden proof on the issues of a compliance order and emergency repairs is on the one who claims it; the tenants in this case. They have failed to satisfy that burden and these two items of their claim are dismissed.

Conclusion

The tenants' claim is dismissed.

The landlord will have an order of possession against the tenants effective at one o'clock in the afternoon on August 31, 2015.

The tenant's are responsible to pay the June rent and \$800.00 of use and occupation money for each of the months of July and August 2015. If they fail to do so the landlord may apply for a monetary award.

As she has been only partially successful, I award the landlord \$25.00 of her filing fee and I authorize her to reduce the \$400.00 security deposit by \$25.00 in full satisfaction of that \$25.00.

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 28, 2015

Residential Tenancy Branch

