



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, MNSD, OPB, OPC, CNC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for cause, a request for a monetary order for \$24,731.89, and a request for recovery of the \$100.00 filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for cause, and a request for recovery of the \$50.00 filing fee.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the landlords have put on their application. For claims to be combined on an application they must related.

Not all the claims on the landlord's application are sufficiently related to the main issue to be dealt with together.

Therefore the issues I will deal with are, whether or not to cancel or uphold the Notice to End Tenancy, and the requests for recovery of the filing fees. The landlord's monetary claim will be dismissed with leave to reapply.

Background and Evidence

This tenancy began on August 1, 2014 with a monthly rent of \$1300.00 due on the first of each month.

On July 20, 2015 the landlord served the tenants with a one-month Notice to End Tenancy, by registered mail, stating the following reasons:

- Tenant is repeatedly late paying rent.
- Tenant has caused extraordinary damage to the unit/site or property/Park.
- Tenant has not done required repairs of damage to the unit/site.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
- Tenant has assigned or sublet the rental unit/site without the landlord's written consent.

I dealt first with the claim that the tenant is repeatedly late paying the rent.

Landlords testified that the tenants have been late with the rent on three separate occasions in just a one year period.

The landlord stated that the September 2014 rent was not paid in full until September 2, 2014, the January 2015 rent was not paid in full until January 6, 2015, and the March 2015 rent was not paid in full until March 4, 2015.

The landlord further stated that they have supplied copies of the e-mails notifying them of the interact e-transfers that clearly show the dates that the e-transfers were made available.

The tenants testified that they did pay a portion of the September 2014 rent late, and they did pay the January 2015 rent late; however they argue that they did not pay the March 2015 rent late.

The tenants testified that since March 1, 2015 fell on a Sunday, they were not required to pay the rent until the next business day which was Monday, March 2, 2015.

The tenants further testified that the e-transfer was actually made on March 2, 2015 and not on March 4, 2015 as stated by the landlord, and that March 4, 2015 was just the date that the landlord accepted the e-transfer

The tenants further testified that in support of their claim they have supplied a photograph of their bank statement, which they argue shows that the e-transfer was made on March 2, 2015.

In response to the tenant's testimony, the landlord testified that the notification of the e-transfer arrived on March 4, 2015 and they accepted it that same date. They got no notification of any e-transfer on March 2, 2015.

Analysis

I reviewed all documentary evidence supplied and it is my finding that the landlords have shown that the rent has been late on three separate occasions in less than a one year period.

The tenants have admitted that rent was late on September 2014, and January 2015, however they argue that rent was actually paid on March 2, 2015 and therefore was not late however it's my finding that they have not met the burden of proving that claim.

First of all, the photograph of the bank statement supplied by the tenants in support of their claim has not been sent in an acceptable form. Section 3.10 of the Residential Tenancy Branch Rules of Procedure states:

- Digital evidence includes only photographs, audio recordings, and video recordings. Photographs of printable documents, such as e-mails or text messages, are not acceptable as digital evidence.

Therefore I am unable to accept the tenants photograph of their bank statement as evidence in support of their claim, further even if I were able to accept it, the document has been altered, and although the tenants claim it was only altered to blackout other transactions, I have no way of knowing what changes have been made to the document. This is why photographs of documents are not accepted as digital evidence.

Therefore since it's my finding that rent has been late at least three times in less than one year period, the landlord does have the right to end this tenancy under Section 47(1)(b) of the Residential Tenancy Act and I will not cancel the Notice to End Tenancy and this tenancy ends pursuant to that notice.

Having upheld the Notice to End Tenancy for repeated late rent payments there is no need to make any findings on the other reasons given for ending the tenancy.

Since I have upheld the Notice to End Tenancy, I allow the landlords request for an Order of Possession. The landlord requested that that order be issued for November 15, 2015, however the tenants argued that it would be too difficult to vacate on such short notice, and they have requested an Order of Possession be issued for December 31, 2015.

After reviewing the information provided by both sides it's my finding that it would be difficult for the tenants to vacate by November 15, 2015 and therefore pursuant to Section 55(3) of the Residential Tenancy Act, I will be issuing the Order of Possession for November 30, 2015. I do not believe it's reasonable to expect the landlord to wait until December 31, 2015.

The tenants will still be required to pay rent for the month of November 2015.

Conclusion

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

I have issued an Order of Possession to the landlords for November 30, 2015 and I further order that the tenants bear \$50.00 of the landlords filing fee and order that the landlords bear the remaining \$50.00.

The landlord's monetary claim is dismissed with leave to reapply.

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: October 19, 2015

Residential Tenancy Branch

