



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, MT, CNR, MNR

Introduction

This hearing dealt with two related applications. One was by the tenant, MRC, who was the only tenant who appeared at the hearing, for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent, granting him an extension of time in which to file that application, and compensating him for the cost of emergency repairs. The other application was by the landlord against the tenant and four other tenants in this house for an order of possession and a monetary order. Although served with the landlord's Application for Dispute Resolution and Notice of Hearing by registered mail sent to the rental unit, the other four tenants did not appear.

Issue(s) to be Decided

- Should the tenant MRC be granted an extension of time in which to file this application?
- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 1, 2015 valid?
- If so, should an order of possession be granted and on what terms?
- Should a monetary order be made in favour of the tenant MRC and, if so, on what terms?
- Should a monetary order be made in favour of the landlord and, if so on what terms?

Background and Evidence

According to the tenant he moved into this house in January 2015. He paid a monthly rent of \$375.00 plus \$50.00 per month for utilities. The rent was due on the first. There were a variety of other tenants in the house, all with the same arrangement.

At that time a different individual owned the house and was the landlord. The tenant testified that this landlord put him in charge of the upper floor. They had a verbal agreement that the tenant would make repairs as required and at the end of each month the cost of materials and the tenant's labour would be deducted from his rent.

According to the tenant there was a major drainage problem in the spring. He said he had to spend a lot of time fixing the issue. Other than the most general of descriptions the tenant did not provide any particulars of his claim for monetary compensation nor did he submit any evidence in support of his claim. It was just at this point that he discovered that the landlord had sold the house.

A contract of purchase and sale was signed between the previous landlord and the current landlord on April 21, 2015. The contract provided for a completion date of June 29, 2015. The contract provided for vacant possession of the property by June 30. It also provided that if the tenants did not move out by the end of June the buyers will collect the rent for July.

On or about April 25 the former landlord served all the tenants with a 2 Month Notice to End Tenancy for Landlord's Use. The effective date of the notice was June 30. No one moved out.

According to the landlord no one paid rent after June 30 either and whenever he went to the house to collect rent or to try to talk to the occupants they would not let him into the house.

The tenant testified that he withheld rent as a means of obtaining compensation for his repair work. He also said that he knew that the other tenants did not pay rent and he described the occupants of the lower level as squatters.

In their testimony both parties referred to previous applications and the outcome of those applications. As a result of their testimony I checked the records of the Residential Tenancy Branch and confirmed that:

- On August 20 an application by the landlord for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent was dismissed with leave to re-apply because of a problem with service of the Application for Dispute Resolution and Notice of Hearing.
- On August 28 an application by the tenant for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use, extending the time in which to file that application, and compensating him for emergency repairs was dismissed with leave to re-apply because neither party appeared at the hearing.

The file numbers of these applications is noted on the front page of this decision.

The new landlord obtained the names of the tenants from the vendor's real estate agent. On October 1, 2015 the landlord issued and posed a 10 Day Notice to End

Tenancy for each tenant; each claiming arrears in the amount of \$1125.00. The only tenant to file a response was the tenant MRC, who filed this application on October 8, 2015.

Analysis

With respect to the MRC's application for an extension of time, a notice to end tenancy posted at the rental unit is deemed received three days after it is posted. Accordingly, the 10 Day Notice to End Tenancy for Non-Payment of Rent is deemed to have been received on October 4. The tenant filed his application disputing that notice within five days of the deemed delivery date so an order extending the time in which to file his application is not necessary.

With regard to the tenant's claim for compensation for the cost of emergency repairs the onus is on the tenant, as it is on every applicant, to prove their claim on a balance of probabilities. As stated earlier in this decision, the tenant provided no detail or evidence in support of his claim except the most general of descriptions. He has not met the required standard of proof and accordingly, his claim for monetary compensation is denied.

I find that the tenant MRC owes rent for July, August, September, October and November in the amount of \$1875.00 and utilities for the same period in the amount of \$250.00 for a total of \$2125.00. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 1, 2015 is valid and the landlord is entitled to an order of possession effective two days after service.

With regard to the other four tenants they have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the *Residential Tenancy Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an order of possession effective two days after service on these tenants.

I find that the landlord has established a total monetary claim of \$2125.00 against each of the other four tenants comprised of arrears of rent for July, August, September, October and November in the amount of \$1875.00 and utilities for the same period in the amount of \$250.00.

As the landlord was successful on his application he is entitled to reimbursement of the \$100.00 fee he paid to file his application. I order that this amount be divided equally between each of the five tenants named on the landlord's application and the sum of \$20.00 will be added to the amount owed by each tenant to the landlord.

I find that each tenant named in the landlord's application had a separate tenancy agreement with the landlord. As the terms of the order of possession are the same for each tenant and the means of enforcement will be the same I have issued one order for all five tenants.

However, as the enforcement of the monetary order against each tenant will be separate I have issued a separate monetary order for each tenant.

Conclusion

- a. An order of possession effective two days after service on the tenants has been granted. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in favour of the landlord against each of the tenants in the amount of \$2145.00 has been granted. If necessary, it may be filed in the Provincial Court (Small Claims) 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: November 23, 2015

Residential Tenancy Branch

