



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF (Landlord's Application)
 CNR, MNDC, RR, FF (Tenant's Application)

Introduction

This hearing convened as a result of Cross Applications. In the Landlord's Application he sought an Order of Possession based on a Notice to End Tenancy for Unpaid rent or Utilities issued on November 9, 2015 (the "Notice") a Monetary Order for \$9,932.71 unpaid rent and utilities, for money owed or compensation or compensation for damage or loss under the *Act*, Regulation or tenancy agreement and to recover the filing fee.

In the Tenants' Application they sought to cancel the Notice, authority to reduce the rent for repairs, services or facilities agreed upon but not provided, a Monetary Order for \$6,700.00 for money owed or compensation or compensation for damage or loss under the *Act*, Regulation or tenancy agreement and to recover the filing fee.

Both parties appeared at the hearing. The Tenant J.A. appeared on her own behalf and as agent for the Tenant, A.M. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 10 Day Notice to End Tenancy and the continuation of this tenancy is not sufficiently related to the Tenants' monetary claim or their claim to reduce the rent pursuant to section 65(1). As noted during the hearing, the parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

Accordingly, I exercise my discretion to dismiss the Tenants' claim for monetary compensation and their request for an Order that they be permitted to deduct the cost of repairs, services or facilities from the rent; they are at liberty to re-apply for this relief.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Should the Notice be cancelled?
3. Is the Landlord entitled to monetary compensation from the Tenants for unpaid rent and utilities?
4. Should either party recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows: the 1 year fixed term tenancy began June 15, 2014; monthly rent was payable in the amount of \$2,200.00; and the Tenants paid a security deposit of \$1,100.00 at the start of the tenancy.

The Residential Tenancy Agreement signed May 27, 2014 (the "Agreement") was also introduced in evidence. The Agreement provided that electricity was not included in rent.

The Agreement further provided that at the expiration of the 12 months the tenancy would end. The Landlord testified that in April of 2015 the Tenants requested that they be able to remain in the rental unit until April of 2016 provided that they pay the

outstanding rent. The Landlord provided a spreadsheet in evidence which indicated that \$140.00 was owed as of April 2015.

The Landlord also stated that he agreed the tenancy could continue provided that the Tenants pay the outstanding amounts. He further testified that despite the Tenants promise to pay the amounts in full they failed to do so.

At the time of the hearing the Landlord testified that the Tenants owed \$9,932.71 in outstanding rent and utilities. He confirmed that of that amount the outstanding rent was \$8,276.00 and the outstanding utilities was \$1,656.71.

Introduced in evidence by the Landlord were various text messages between the parties in which the Landlord clearly informed the Tenants as to the outstanding amounts owing for rent and for utilities. In each of these messages the Landlord also provided the Tenants with an updated amount as well as requesting that the Tenants pay the outstanding amounts. The Tenants responded to these messages and confirmed their intention to pay. There was no evidence, in the text messages provided to me, that they disputed the amounts claimed by the Landlord.

Also introduced in evidence was an email dated October 26, 2015 from the Landlord to the Tenants, in which the Landlord agreed to accept a payment schedule provided that the outstanding amount would be paid in full as of November 30, 2015 with the final amount being paid by the Tenants' security deposit of \$1,100.00.

The Landlord confirmed that the Tenants failed to pay the outstanding amounts as offered in his October 26, 2015 email. The Landlord also confirmed that the Tenants failed to pay rent for November 2015, December 2015 and January 2016. He confirmed that the last payment that he received from the Tenants was on October 13, 2015 for \$880.00.

On November 9, 2015 the Landlord issued the Notice indicating the amount of \$4,789.95 was owed for rent and \$1,792.27 for utilities as of November 1, 2015. The Landlord testified that he sent the Notice by registered mail to both Tenants on November 9, 2015 and, to ensure they received it, he also posted the Notice on the front door on November 10, 2015.

The Tenants did not pay the outstanding rent as indicated on the Notice. The Tenants applied for dispute resolution on November 16, 2015.

The Tenant, J.M., testified on behalf of the Tenants. She stated that she disagreed with the amount owing and argued that the Landlord was only ending the tenancy as he wants to demolish the rental unit.

J.M. further testified that the Landlord agreed they could stay until July 2016. J.M. stated that she had surgery and was on bed rest for two months and despite this the Landlord kept texting her about the outstanding rent. She also claimed that he threatened to cut off the utilities and evict them if they didn't pay the rent. J.M. stated that she believed he was "bullying them".

J.M. further argued that she was "always catching up with outstanding rent" and that the Landlord agreed they could pay as and when they were able and he was agreeable to them paying late.

J.M. confirmed that she paid the utilities and disputed the amount claimed by the Landlord.

She further testified that the utilities were included in the rent and they were told they would only have to pay \$100.00 per month for electricity and gas. She further claimed that they never agreed to pay \$300.00 per month which was the amount of the bills, and that in asking them to do so she believed the Landlord was acting illegally,

In response to my question "what amount was outstanding in terms of rent as of November 1, 2015" the Tenant said "maybe \$2,600.00". The Tenant confirmed that she did not pay that amount as she had only just been released from the hospital.

When I stated to the Tenant that, from my review of the text messages, at no time did she appear to dispute the amounts owing as set out in the Landlord's text messages she stated that she disputed the amounts when she spoke to him on the telephone and that she did not record the calls.

The Tenant also confirmed that she did not pay rent for December 2015 or January 2016 because of this "action". She confirmed that she did not have an Order from an Arbitrator that she did not have to pay rent.

The Tenant claimed the Landlord owed the Tenants a "great deal of money". When asked what amount she believed was owed to them from the Landlord she stated, "\$10,000.00"; she further claimed this amount related to the money owing for damage to their belongings when she says the sewer backed up at the beginning of the tenancy.

The Tenant stated that she had tenants' insurance but she did not make a claim as she believed it was the Landlord's responsibility to pursue compensation from the persons he hired to complete the repairs when the sewer backed up. She confirmed she did not make an application for compensation at the time as she believed she could only make an application when she received a Notice to End Tenancy.

J.A. further testified that the Landlord disconnected the utilities. She also stated that he removed her name from the utility account so that she would have no evidence of him doing that.

At the conclusion of her testimony the Tenant again stated that the only reason the Landlord was evicting them was because he wanted to tear down the rental building and that to do so he needed to give them "three months' free rent".

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence as to the amount of rent and utilities outstanding by the Tenants. I am persuaded by the evidence of the text messages between the parties which clearly show that the Landlord regularly informed and updated the Tenants as to the amount owing and that he consistently requested payment. While it is clear the Landlord did attempt to arrange a payment schedule, there was no evidence that he forgave any amounts owing or that the Tenants disputed the amounts; rather, each of the messages from the Tenants to the Landlord communicated their intention to pay the amounts.

Under section 26 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

Accordingly, I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenants. The Landlord must serve this Order on the Tenants and this Order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the Landlord's evidence and find that at the time of the hearing the Landlord was entitled to compensation in the amount of \$9,932.71 including outstanding rent in the amount of \$8,276.00 and outstanding utilities in the amount of \$1,656.71.

As the Landlord was substantially successful, I award the Landlord recovery of the \$50.00 fee paid by the Landlord for this application and grant the Landlord a Monetary Order for the sum of **\$9,982.71**.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenants failed to pay the outstanding rent and their application to dismiss the Notice is dismissed.

The Landlord is granted an Order of Possession and is granted a Monetary Order for the sum of **\$9,982.71**.

The Tenants' application for monetary compensation and for authority to reduce rent pursuant to section 65(1) is dismissed with leave to reapply.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 25, 2016

Residential Tenancy Branch

