



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, MNSD, OPT

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To allow a tenant more time to make an application to cancel a notice to end tenancy;
2. For the return of all or part of the security deposit;
3. To obtain an order of possession of the rental unit.

Both parties appeared, gave 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 at the hearing.

Preliminary matters

Tenants' application

In this case, the tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on January 22, 2016, I find the tenants have applied to cancel the notice within the statutory time limit and more time is not required.

At the outset of the hearing the tenants indicated they are currently living in the rental unit. Therefore, I find an order of possession to the tenants is not required.

The tenants have also sought the return of the security deposit; however, I find this portion of their application is premature as they have not vacated the rental unit.

Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenant MD testified that they received the landlord's notice to end tenancy. The tenant stated they did not pay the outstanding rent as stated in the notice and they have not paid any subsequent rent. The tenant MD stated that they have withheld rent because of rat infestation.

The landlord testified the tenant have not paid all rent owed for December 2015, no rent for January 2016 or February 2016. The landlord seeks an order of possession and a monetary order in the amount of \$3000.00.

Analysis

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenants have not paid the outstanding rent. Although the tenants filed an application to dispute the notice, I find the tenants application is without merit, as the tenants have admitted rent was not paid and the tenants did not have the right under the Act, such as an order from an Arbitrator to deduct any portion from the rent. A tenant cannot withhold rent simply because they feel justified to do so.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

I find that the landlord has established a total monetary claim of **\$3,100.00** comprised of unpaid rent for December 2015, January 2016, February 2016, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of **\$650.00** in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,450.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The tenants failed to pay rent. The landlord is granted an order of possession, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

The tenants' application is dismissed.

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: March 10, 2016

Residential Tenancy Branch

