



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

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 cancel a notice to end tenancy for unpaid rent; and
2. To allow a tenant to reduce rent for repairs.

Both parties appeared, gave 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 at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the parties stated that the tenancy ended on January 18, 2016. As a result, I find it not necessary to consider the landlord application for an order of possession or the tenants' application to cancel a notice to end tenancy. I further find it not necessary to consider the tenants' application to allow a tenant to reduce rent for repairs, as there is not future rent payable to the landlord.

The tenant indicated that they also seek monetary compensation; however, I note the tenants' application did not contain an application for a monetary order. While the tenants filed on March 7, 2016, a letter dated February 24, 2016, into evidence which

indicates they seek compensation. However, their application was not formally amended as required by the Residential Tenancy Branch Rule 4.1, nor did they pay the required additional filing fee. The tenants are at liberty to file a properly completed application for monetary compensation within the limitation period specified in the Act.

Issues to be Decided

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

Background and Evidence

The parties agreed that the tenancy began on November 1, 2010. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on January 18, 2016.

The landlord testified that the tenant failed to pay rent for October 2015, November 2015, December 2015, and January 2016. The landlord seeks to recover unpaid rent in the amount of \$8,000.00.

The tenant testified that they did not pay any rent for the months indicated by the landlord as the landlord has breached the Act, by providing an environment unfit to live.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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.*

The evidence of the tenant was that they withheld rent for October 2015, November 2015, December 2015, and January 2016, because they believe the landlord has breached the Act. However, the tenant did not have the authority under the Act, such as an order from an Arbitrator to deduct any portion of rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord.

I find that the landlord has established a total monetary claim of **\$8,100.00** comprised of unpaid rent as described above and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$7,100.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 15, 2016

Residential Tenancy Branch

