



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, CNC, ERP, MNDC, MNR, OLC, RR

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 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
2. To have the landlord make emergency repairs for health or safety reasons;
3. For a monetary order for compensation for loss under the Act;
4. For a monetary order for the cost of emergency repairs;
5. To have the landlord comply with the Act;
6. To have repairs made to the unit; and
7. To reduce rent for repairs.

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

In this matter, the tenants have filed 5 amendments to an Application for Dispute Resolution. None of the amendments provide clear details of the change to the original application. Further, the tenants have filed 3 different monetary worksheets, and each monetary worksheet is significantly different. As a result, I unable to determine what the tenants' monetary claim is or for.

Further, rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the notice to end tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the notice to end tenancy and landlord's application. The balance of the tenants' application is dismissed, with leave to re-apply.

Issues to be Decided

Should the notice to end tenancy be cancelled?

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2015. Rent in the amount of \$3,350.00 was payable on the first of each month. The tenants paid a security deposit of \$1,675.00.

At the outset of the hearing the tenants indicated they are currently moving from the rental unit and are agreeable that an order of possession be granted to the landlord effective today, March 15, 2016 at 3:00pm.

The landlord testified that the tenant failed to pay rent for March 2016. The landlord stated that they just received a prorated rent cheque from the tenant in the amount of \$1,675.00. The landlord stated that they are entitled to recover all rent for March 2016.

The tenant testified that the landlord is only entitled to prorated rent for March 2016, as they received an email from the landlord dated March 5, 2015, stating that.

The landlord argued that the tenants did not respond to the email, and they were unable to rent the unit and they had just received the partial payment of rent in the mail a few days earlier. The landlord stated that they are entitled to recover the loss of rent.

Analysis

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

In this case, the tenants are vacating the rental unit. Therefore, I find the landlord is entitled to an order of possession effective March 15, 2016 at 3:00pm.

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-comply 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 landlord was the tenant did not pay all rent owed for March 2016. when due under the tenancy agreement. I find the tenants have breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement.

In this case, the tenants stated that they had the landlord consent to pay a prorated rent for March 2016, if they vacated the rental unit on March 15, 2016; however, the tenant did not provide a copy of the email for my review or consideration. Further, the tenants provided no evidence that they responded to the landlord accepting the terms which would have been reasonable under the circumstance in order for the landlord to re-rent the unit.

I find that the landlord has established a total monetary claim of **\$1,775.00** comprised of the balance due of unpaid rent for March 2016 and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,675.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$100.00**.

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

Conclusion

The tenant's application for monetary compensation is dismissed with leave to reapply.

The landlord is granted an order of possession. 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 16, 2016

Residential Tenancy Branch

