



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AS, CNR, ERP, FF, MNDC, MNR, MT, OLC, PSF, RP, RR, OPR, MNSD

Introduction

This hearing dealt with 2 applications. The tenants applied for an order setting aside a notice to end this tenancy and more time to file that application, a monetary order and orders compelling the landlord to perform repairs, return their personal property, provide services, grant permission to assign their tenancy agreement and comply with the tenancy agreement. The landlord applied for an order of possession and a monetary order. Both parties participated in the conference call hearing with both tenants being represented by the tenant BG.

The parties gave their solemn affirmation that they would tell the truth during the hearing. With the exception of the landlord having submitted a copy of a registered mail receipt, neither party submitted evidence after having submitted their applications and each of the parties acknowledged having received the other's application for dispute resolution.

Issues to be Decided

Should the notice to end tenancy be set aside or is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Are the tenants entitled to a monetary order as claimed?

Are the tenants entitled to orders compelling the landlord to perform repairs, return their personal property, provide services, grant permission to assign their tenancy agreement and comply with the tenancy agreement?

Background and Evidence

Most of the relevant facts are in dispute. The only facts upon which the parties could agree were that in December 2015, the parties entered into an oral tenancy agreement under the terms of which the tenants were obligated to pay \$1,500.00 per month in rent and they further agreed that the tenants had not paid any rent as required.

The landlord testified that on February 4, 2016, he served a notice to end tenancy for unpaid rent (the "Notice") by posting the Notice to the door of the rental unit. The tenants acknowledged having received the Notice on February 6 and filed their application to dispute the Notice on February 13. BG explained that she delayed in filing her application because she hoped to work things out with the landlord and requested more time to file her application.

BG testified that she offered the landlord partial payment for the month of December but he refused to take it all until she had the entire amount owing, so she did not make any further attempts to pay rent. She further testified that her co-tenant, RG, had lived in the unit previous to December and at that time he and another party had an agreement that they would perform work in the rental unit for the landlord in lieu of rent. BG acknowledged that there was no written agreement stipulating that RG did not have to pay rent. The landlord testified that he had hired the other party to perform work on the unit and that the other party had invited RG to live in the unit with him without the landlord's permission. The landlord denied having made any arrangements with RG to give him housing in exchange for work performed. He acknowledged that he refused a partial payment, insisting instead that the tenants provide him with the full payment in rent for each month.

The tenants seek an order compelling the landlord to perform repairs to the rental unit, claiming that it is in poor condition, but provided no evidence either oral or documentary as to any communication to the landlord requesting that repairs be performed. They also did not provide any photographic evidence showing the condition of the unit.

The tenants asked that the landlord provide services but did not identify what services those were, they asked that the landlord be compelled to return their personal property but did not identify what property had been taken and did not provide any evidence with respect to their claim for an order compelling the landlord to permit them to assign their tenancy agreement.

The tenants seek a monetary order for \$10,000.00, claiming that they have performed substantial repairs and renovations in the rental unit and require compensation. BG

claimed that a previous occupant had receipts showing work he and RG had performed but she did not have an opportunity to obtain those receipts.

Both parties seek to recover from the other the \$100.00 filing fee paid to bring their respective applications.

Analysis

The tenants acknowledged receiving the Notice on February 6. Section 46(4) of the Act provides that tenants who receive this type of a notice must apply to dispute the Notice within 5 days of receipt. The tenants did not file their application for 7 days after they received the Notice. Section 66 of the Act permits me to extend this timeline, but only when the tenants can prove that exceptional circumstances prevented them from acting within the prescribed timeframe. While the tenants' desire to come to an agreement with the landlord is laudable, I find that it does not constitute exceptional circumstances as the tenant could have filed their application before or during their attempts at negotiation. I find that the tenants are not entitled to an extension of time to dispute the notice and for that reason I dismiss their claim for an order setting aside the notice. However, even if the tenants had filed their application within 5 days, I would have dismissed their claim for the following reasons.

The tenants are obligated to pay rent when it is due. The parties agreed that they were required to pay \$1,500.00 on the first day of each month and they refused to do so because the landlord would not accept their first partial payment. The landlord is not obligated to accept partial payments; he is entitled to the full amount of rent on the date on which it was due.

Although the tenants claimed that the landlord had offered them free rent in lieu of work performed in the rental unit, the landlord denied this agreement and the tenants have no evidence to support their claim. They have not provided any receipts showing materials purchased to perform the alleged work nor have they provided photographs showing the work or that the unit required repairs or renovations. In the absence of any evidence to corroborate their claim, I find that there was no agreement that the tenants were relieved of their obligation to pay rent.

I grant the landlord an order of possession which must be served on the tenants. If the tenants fail to comply with this order, it may be filed in the Supreme Court and enforced as an order of that Court.

As I have found that the tenants have paid no rent throughout their tenancy, I find that the landlord is entitled to recover the rental arrears and I award him \$7,500.00. I further

find that as the landlord has been wholly successful in his claim, he should recover the \$100.00 filing fee paid to bring his application and I award him that sum for a total award of \$7,600.00. I grant the landlord a monetary order under section 67 for \$7,600.00. As the parties offered no evidence with respect to a security deposit, I have not set off the deposit against that award. However, the landlord has the right to retain the deposit pursuant to section 38(3) of the Act. If the landlord chooses to retain any deposit he holds, this will serve to reduce the enforceable portion of the monetary order.

I also dismiss the tenants' claim for a monetary order. Again, the tenants provided absolutely no evidence to corroborate their claim that the rental unit required repairs or renovations, that they had the landlord's permission to renovate the rental unit or that they actually performed any work.

As the tenants submitted no evidence that the landlord has any of their personal property, I dismiss the claim for an order compelling the landlord to return it. I also dismiss the tenants' claim for an order compelling the landlord to comply with the tenancy agreement as I have found that the tenants provided insufficient evidence to prove that the landlord agreed that they could perform repairs in lieu of rent.

As the tenancy is ending, I dismiss the tenants' claims for orders compelling the landlord to perform repairs, provide services and grant permission to assign their tenancy agreement.

Conclusion

The tenants' claim is dismissed in its entirety. The landlord is granted an order of possession and a monetary order for \$7,600.00.

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: April 07, 2016

Residential Tenancy Branch

