



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNE, CNR, ERP, FF, MNDC, O, MNSD, RP

Introduction

This is an application brought by the tenant(s) requesting an Order canceling three different Notices to End Tenancy, requesting a Monetary Order in the amount of \$14,675.00,, requesting an Order for emergency repairs, requesting an Order for repairs, requesting an Order for return of the security deposit, and requesting recovery of their filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties

The parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicants have put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel the three Notices to End Tenancy, the request for repair orders, and the request for recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

The first issue I dealt with is a request to cancel the 10 day Notice to End Tenancy for nonpayment of rent as this is the most urgent matter.

Background and Evidence

This tenancy began on August 1, 2012 and the present monthly rent is \$1650.00 due on the first of each month.

The tenants had fallen behind on the rent and therefore February 18, 2016 the landlord served the tenants with a 10 day Notice to End Tenancy for nonpayment of rent.

The landlord testified that at the time that the ten-day Notice to End Tenancy was served, there was a total of \$2750.00 in rent outstanding, and that as of today's date there is a further two months' rent outstanding, and therefore he is requesting that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

The tenant testified that he believes there's a discrepancy in the amount of rent outstanding for the month of January 2016 and therefore, since they were unable to resolve the discrepancy, they decided to withhold the rent until the dispute could be brought to arbitration.

The tenant is therefore asking that the Notice to End Tenancy be canceled since the discrepancy in the amount of money owed to the landlord has not yet been resolved.

Analysis

Section 26 of the Residential Tenancy Act states:

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 tenant did not have the right to to deduct all or a portion of the rent, they simply chose to withhold the rent without any authority to do so, and therefore, pursuant to section 46 of the Residential Tenancy Act, the landlord had the right to end this tenancy.

Section 46 of the Residential Tenancy Act states:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Therefore, as stated above, in the landlord did have the right to end this tenancy and I will not cancel the Notice to End Tenancy for nonpayment of rent, and pursuant to section 55 of the Residential Tenancy Act I will be issuing an Order Of Possession to the landlord.

Since this tenancy is ending pursuant to the ten-day Notice to End Tenancy, there is no need for me to deal with the request to cancel the one month Notices to End Tenancy or the request for repairs to the rental unit.

Further, since this tenancy is ending I will not allow the tenants request for recovery of their \$100.00 filing fee.

Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenants.

As stated previously the tenants request for a Monetary Order and recovery of their security deposit is dismissed with leave to reapply.

Since this tenancy is ending the requests for repair Orders are dismissed without leave to reapply.

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 11, 2016

Residential Tenancy Branch

