



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR MND MNR MNSD FF - Landlord's application
CNR MNDC OLC RR FF – Tenants' application

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of both the Landlord's and the Tenants' applications for Dispute Resolution I have determined that I will not deal with all the dispute issues the Landlord and Tenants have placed on their applications. For disputes to be combined on an application they must be related.

Not all the claims on these applications are sufficiently related to the main issues relating to the 10 Day Notice to end tenancy and the non-payment of rent. Therefore, I will deal with the Tenants' request to cancel the 10 Day Notice and the recovery of their filing fee and the Landlord's requests for an Order of Possession for unpaid rent; the monetary order request for unpaid rent; the request to offset the unpaid rent against the security deposit; and recovery of the Landlord's filing fee. All other items listed on both the applications for Dispute Resolution are dismissed, with leave to re-apply.

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by on Landlord and the two Tenants. The hearing was conducted via teleconference and was attended by the male Landlord and both Tenants. Each person gave affirmed testimony.

The Landlord filed his application on March 23, 2016 naming both Tenants as respondents. The Tenants filed their application on March 9, 2016 listing two respondent Landlords. Only one Landlord appeared at the hearing; therefore, for the

remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

The Tenants confirmed receipt of the Landlord's application and evidence documents. The Landlord affirmed receipt of the Tenants' application and denied receipt or notification of the Tenants' second package which consisted of their evidence and was sent to the Landlord via registered mail.

Canada Post receipts were submitted in the Tenants' evidence submission which supports their testimony that the Landlords were served their evidence package on April 8, 2016 via registered mail. The Landlord later submitted testimony that he was currently out of Province. I accept the submissions of the Tenants that their evidence was served upon the Landlord in accordance with the *Act*. Failure to pick up registered mail does not negate or avoid service of documents. Therefore, I conclude the Landlord was sufficiently served with the Tenants' evidence on April 13, 2016, five days after it was mailed, pursuant to section 90 of the *Act*.

Issue(s) to be Decided

- 1) Should the 10 Day Notice to end tenancy be upheld or cancelled?
- 2) If cancelled, is the Landlord entitled to an Order of Possession?
- 3) Has the Landlord proven entitlement to a Monetary Order?

Background and Evidence

The female Tenant began occupying the rental unit as of July 22, 2012 based on a written fixed term tenancy agreement that stated the tenancy began on July 15, 2015. Rent began at \$650.00 per month and the Tenant paid \$300.00 as the security deposit. The male Tenant moved into the rental unit with the female Tenant in approximately June 2014.

On July 29, 2014 the Tenant signed the document titled "AGREEMENT TO CONTINUE THE RESIDENTIAL TENANCY ACT". That document was submitted at page 3 in the Tenants' evidence and included, in part as follows:

..this lease agreement continue one more year starting from Aug. 1st 2014 and ending on July 30th, 2015.

The rent will be \$735.00 other terms in the original contract will remain the same.

Please write down the details of your partner living with you in the rental premises

Full Name: [male Tenant's name]

[Reproduced as written excluding male Tenant's name]

The Tenants submitted a copy of an agreement titled "Agreement to Continue the Residential tenancy" which was signed by both Tenants on July 27, 2015 and which states, in part:

The agreed upon rent starting August 1, 2015 will be \$750/month.

The Landlord testified the Tenants failed to pay their February 2016, March 2016 and April 2016 rent. A 10 Day Notice to end tenancy was issued March 4, 2016 listing \$1,470.00 as the unpaid rent and an effective date of March 15, 2016.

The Landlord testified he now seeks to recover the unpaid rent for the three months at \$750.00 per month and an Order of Possession.

The Tenants confirmed they had not paid rent for February, March, or April 2016. They submitted they were not required to pay rent for February 2016 because they were of the opinion they were issued an illegal rent increase in 2014 based on the above mentioned agreement the female Tenant signed on July 29, 2014. As such they calculated the extra rent they had paid and deducted it from their rent owed for February 2016.

The Tenants submitted a copy of a 2 Month Notice to end tenancy they had been served by the Landlord. They asserted the Notice listed an incorrect effective date and they were told they could withhold their rent for March 2016 because they received that 2 Month Notice. The Tenants confirmed they had not filed an application to dispute the 2 Month Notice when they received it in January 2016. In addition, the Tenants confirmed they are still occupying the rental unit and with continue occupying the unit until April 30, 2016. The Tenants affirmed they had secured another rental unit and would be moving out of the Landlord's unit on April 30, 2016.

The Tenants testified they did not pay their April 2016 rent because they were waiting to find out what happened in this hearing and to determine how much, if any, rent is owed to the Landlords. The Tenants asserted they were seeking to recover payment for repairs they conducted on the rental unit.

During my attempts to explain to the Tenants how the *Act* stipulates they must pay rent despite any disagreements they may have with their Landlord, the female Tenant began to yell, scream and swear at the Landlord. The male Tenant was able to calm the female Tenant after receiving my directions to do so. When I began discussing the Landlord's request to keep the security deposit the female Tenant began to yell profanities and swear at the Landlord again. At that time I ended the hearing and instructed the Tenants to disconnect, pursuant to Rule of Procedure 6.10.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7(2) of the *Act* stipulates that a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants received the 10 Day Notice on or around March 4, 2016 and filed their application to dispute the 10 Day Notice on March 9, 2016 within the required timeframes. Accordingly, I find the effective date of the 10 Day Notice to be **March 14, 2016**.

Under section 26 of the *Act*, a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by section 33 of the *Act*.

Although the Tenants submitted evidence including receipts for repairs, the items listed on the actual receipts did not meet the definition of emergency repairs, nor did they total an amount equal to two or three months of unpaid rent. The Tenants had written on the receipts which may have indicated the items purchased may meet the definition of emergency repairs; however, those items were not of a value equal to a month's rent. Accordingly, I concluded there was insufficient evidence to prove the Tenants paid for emergency repairs. If the Tenants suffered a loss due to the cost of repairs, they are at liberty to file another application if they wish to seek recovery of those losses.

Section 43(1)(c) of the *Act* stipulates that a landlord may impose a rent increase if agreed to by the tenant in writing.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

The undisputed evidence was the female Tenant entered into a written agreement with the Landlord on July 30, 2014 to add the male Tenant to the tenancy and increase the rent to \$735.00. Another written agreement was entered into on July 27, 2015 and signed by both Tenants increasing the rent to \$750.00 per month. Upon review of these agreements, I find that both agreements met the requirements of section 43(1)(c) of the *Act*. Therefore, I conclude the Tenants were not issued an illegal rent increase; rather, they mutually agreed to the increase in rent in writing, in accordance with the *Act*. Accordingly, the Tenants had no authority to withhold the payment of their rent for February, March, or April 2016 for the reason of an illegal rent increase.

The *Act* does not have a provision that allows a tenant to withhold their rent while they are waiting for a Decision or outcome of a dispute resolution process. Therefore, the Tenants were not excused from paying their March or April 2016 rents for that reason.

Section 53 (1) of the *Act* provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 53 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

Section 51(1) of the *Act* provides a tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 51 (1.1) states a tenant referred to in subsection (1) may withhold the amount authorized from the **last month's rent** and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord. [My emphasis added by bold text].

The undisputed evidence was the Tenants were served a 2 Month Notice to end tenancy pursuant to section 51(1) of the *Act* on or around January 10, 2016. Therefore, the effective date of the 2 Month Notice would be **March 31, 2016**, pursuant to section 53 of *Act*.

At this April 25, 2016 hearing the Tenants acknowledged they continued to reside in the rental unit, and would be doing so until April 30, 2016, despite being served the 2 Month Notice and the 10 Day Notice.

After consideration of the totality of the evidence before me I find this tenancy ended as per the Notice to end tenancy that listed the earliest effective date. That is to say, this tenancy ended as of the effective date of the 10 Day Notice on **March 14, 2016**, pursuant to section 62 of the *Act*. Accordingly, I grant the Landlord an Order of Possession.

The Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenants**. In the event that the Tenants do not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

There was insufficient evidence to prove the Tenants had any legal right to withhold their payment of February 2016 rent. Therefore, I find the Tenants were in breach of section 26 of the *Act* which caused the Landlord to suffer loss of February rent. Accordingly, I grant the Landlord's application for unpaid February 2016 rent in the amount of **\$750.00**, pursuant to section 67 of the *Act*.

As indicated above, the Tenants are entitled to compensation equal to one month's rent pursuant to section 51 of the *Act*, and may withhold the payment of their last month's rent. The last month of rent payable in this tenancy is March 2016, which the Tenants have not paid. Therefore, I find the Tenants have received their compensation equal to the amount of one month's rent for the month of March 2016.

The Landlord is entitled to payment for use and occupancy of the rental unit for every day the Tenants continue to occupy or over hold the rental unit after the tenancy end date of **March 14, 2016**. Accordingly, I grant the Landlord compensation for use and occupancy for the entire month of April 2016 in the amount of **\$750.00**.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily been successful with their application; therefore I award recovery of the Landlord's **\$100.00** filing fee

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the Tenants' \$300.00 security deposit since July 2012.

The Landlord's monetary claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid February 2016 Rent	\$ 750.00
Use and Occupancy for April 2016	750.00
Filing Fee	<u>100.00</u>
SUBTOTAL	\$1,600.00
LESS: Security Deposit \$300.00 + Interest 0.00	<u>-300.00</u>
Offset amount due to the Landlord	<u>\$1,300.00</u>

The Tenants are hereby ordered to pay the Landlord the offset amount of **\$1,300.00** forthwith.

In the event the Tenants do not comply with the above order, the Landlord has been issued a Monetary Order in the amount of **\$1,300.00** which may be enforced through Small Claims Court after service to the Tenants.

The Tenants were not successful with proving their application to cancel the 10 Day Notice and that request is dismissed, without leave to reapply. Therefore, I declined to award the Tenants the return of their filing fee.

Conclusion

The Landlord was primarily successful with their application and was awarded an Order of Possession effective 2 days upon service and a Monetary Order in the amount of **\$1,300.00**. The Tenants' request to cancel the 10 Day Notice was dismissed, without leave to reapply.

Both the Landlords and the Tenants were granted leave to file another application if they suffered damage or loss which was not decided upon in this Decision.

This decision is final, legally binding, and 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 25, 2016

Residential Tenancy Branch