



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MND, MNR, MNDC, FF, O
 CNL, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for landlord's use of property; for a monetary order for damage to the unit, site or property; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlords.

Both landlords and both tenants attended the hearing, and one of the landlords and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Have the landlords established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, and more specifically with respect to good faith intent?
- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?
- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Have the landlords established a monetary claim as against the tenants for unpaid rent?
- Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for recovery of a monetary order made against the landlords at a previous hearing?

Background and Evidence

The landlord testified that this fixed term tenancy began on February 15, 2015 and expired on August 14, 2015 at which time the tenancy reverted to a month-to-month tenancy. The tenants still reside in the rental unit. Rent in the amount of \$1,050.00 per month is payable under the tenancy agreement, a copy of which has been provided, on the 1st day of each month, however a previous Decision of the director reduced rent to \$800.00 per month on March 21, 2016. A copy of the last 2 pages of that Decision has also been provided. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of \$525.00 as well as a pet damage deposit in the amount of \$475.00, both of which are still held in trust by the landlords.

The landlord further testified that on April 27, 2016 he posted a 2 Month Notice to End Tenancy for Landlord's Use of Property at a conspicuous spot at the end of the driveway of the rental unit, and has provided a photograph. A copy of the notice has also been provided and it is dated April 26, 2016 and contains an effective date of vacancy of June 30, 2016. The reason for issuing the notice is: The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse. The landlords have been residing in a 175 square foot tiny house, but testified that moving into it was an experiment a couple of years ago and the experiment is finished and the landlords intend to move into the rental home. The landlords are retired and short financially so the landlord needs to go back to work. The landlord had worked for Walmart night shift and intends to go back to work, but cannot sleep during the day in the tiny house with his wife and a dog.

The landlords have also provided a monetary order worksheet setting out the following claims:

- \$1,850.00 for unpaid rent;
- \$292.50 for repairs to the driveway;
- \$945.00 for recovery of an Order made by the director on March 21, 2016;
- \$20.00 for an Affidavit fee; and
- \$100.00 for a filing fee.

The landlords had served the tenants with a 1 Month Notice to End Tenancy for Cause and believed they had to provide the tenants with a free month of rent under the legislation, so didn't collect rent for February, 2016. The landlords since learned that compensation was not required, and the landlords claim \$1,050.00 for February's rent.

The dispute resolution hearing was held on March 21, 2016 and the landlords received a copy of the resulting Decision which reduces rent payable to \$800.00 per month until repairs were completed to the rental unit, but the Decision is silent as to when that

commences. The tenants paid \$1,050.00 for March rent and \$1,050.00 for April's rent but have not paid any rent for May or June, 2016. A copy of the last 2 pages only of the Decision has been provided, which sets out the following awards in favour of the tenants:

• Truck Repairs	\$1,117.84	
• Repairs to the road	\$ 292.50	
• Loss of use of spare room	\$ 945.00	
• Loss of use of part of the deck	\$ 630.00	
• Filing Fee	\$ 100.00	
• Amount Owning		<u>\$3,085.14</u>

The tenants' moving truck damaged the dirt driveway leaving deep crevices. The landlord tried to fill it in, but in the spring it can get muddy. Also, the tenants' friend drove his back-hoe or a similar machine with a scoop on the front causing potholes. The landlord testified that he had no way of determining the amount, and the Decision of the director from the March 21, 2016 hearing ruled that amount against the landlords. The tenants had claimed the driveway was in bad repair, but the landlord has no idea how the Arbitrator came up with that amount, and the landlords claim it back.

The Arbitrator also ruled that the landlords pay to the tenants the sum of \$945.00 due to a heater the tenants claimed was not functioning. The landlord emailed the tenant stating he was going to the rental unit with his brother-in-law to assess it, but the tenant fired back saying to stay away. An inspection was done in November, 2015 and the Decision of the director was made on March 21, 2016, and the landlords want that money back.

With respect to the landlords' claim for the \$100.00 filing fee, the landlord testified that no fee was paid by the landlords, but the tenants should pay that amount to the Residential Tenancy Branch.

The tenant testified that he does not believe the landlords will be moving into the rental unit. The landlord doesn't yet have a job, and was well aware that the tenants wanted a long-term tenancy. Most of this was covered in the March, 2016 hearing, and there's no need for the landlords to move into the rental unit. On May 17, 2016 the tenant downloaded an advertisement placed by the landlords to sell the rental unit for an asking price of \$289,000.00. A copy has been provided. The tenant testified that they never would have moved in if they knew the landlords were experimenting with a tiny house. The landlords want the tenants to move to avoid having to pay the judgment ordered on March 21, 2016.

The tenant further testified that the landlords didn't show up at the hearing on March 21, 2016, and the landlords later applied for a review hearing but were not successful. The tenants have provided a copy of the Decision on review and provided a file number assigned by the Residential Tenancy Branch.

The tenant also testified that the unpaid rent for February was dealt with in that hearing, and the tenants paid \$1,050.00 for March and \$1,050.00 for April, 2016. May's rent was not paid because the landlords were ordered to pay to the tenants the sum of \$3,085.14 and the landlords still owe \$1,735.14 after all deductions are made. The reduction in the monthly rent was ordered until repairs have been completed, and nothing has been done. The tenants offered to let the landlords pay off the judgment by reducing rent by \$100.00 per month to assist the landlords' financial situation.

Analysis

Firstly, where a notice to end a tenancy given by a landlord is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it is in dispute.

The landlord testified that the landlords' current tiny home is too small and due to the landlords' financial situation he needs to come out of retirement and go back to work. I don't know how the tenants could dispute such testimony. The landlord also testified that he will be working night shift and is unable to sleep during the day in the tiny house with a spouse and a dog. I accept that, however the landlord has not yet been hired to go back to work. I must also consider the testimony of the tenant and the advertisement showing that the landlords intend to sell the rental unit. For that reason, I am not convinced that the landlords' good faith intent has been shown. The *Residential Tenancy Act* permits a landlord to end a month-to-month tenancy if the landlord intends in good faith to occupy the rental unit, or once all conditions for the sale of the rental unit have been satisfied. I am satisfied that the landlords intend to sell, and whether or not the landlords intend to move into the rental unit until it sells, that does not satisfy the *Residential Tenancy Act*, and I cancel the notice. The landlords are at liberty to re-issue such a notice once the landlords can establish good faith intent to use the rental unit for the purpose contained in the notice.

Since the tenants have been successful with the application, the tenants are entitled to recovery of the \$100.00 filing fee.

With respect to the landlords' monetary claim, the law prohibits me from dealing with issues that have already been dealt with at Arbitration. In this case, the landlords did not attend the March 21, 2016 hearing, applied for a review unsuccessfully, and may now not come in the back door to obtain an order to counteract a previous order. Therefore, the landlords' claims for \$292.50 for driveway repairs and \$945.00 for lack of a heater previously awarded to the tenants cannot succeed.

A party may apply for recovery of a filing fee if that party paid one. In this case, the landlords were allowed by the Residential Tenancy Branch to file the application without the required fee. To order the tenants to pay the landlords' fee to the Branch is not contemplated by the *Act*, and therefore I dismiss it.

Similarly, I dismiss the landlords' application for recovery of an Affidavit fee. The *Act* contemplates a filing fee paid by a party but not for recovery of costs related to preparing for a hearing.

With respect to the landlords' claim for unpaid rent, I have reviewed the last 2 pages of the March 21, 2016 Decision. The parties agree that the tenants paid \$1,050.00 for March and \$1,050.00 for April, 2016. The Decision of the director reduced rent to \$800.00 per month, which I find commenced with the first month following the hearing, a difference of 250.00 for the month of April. In completing the math, I find as follows:

MONTH	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	BALANCE DUE TO LANDLORDS
February 2016	Rent Due	\$1,050.00	0	\$1,050.00
March 2016	Rent Due	\$1,050.00	\$1,050.00	\$1,050.00
March 21/16	Order of the director	(\$3,085.14)		(\$2,035.14)
April 2016	Rent Due	\$800.00	\$1,050.00	(\$2,285.14)
May 2016	Rent Due	\$800.00		(\$1,485.14)
June 2016	Rent Due	\$800.00		(\$685.14)
June 2016	Tenants' Filing fee	(\$100.00)		(\$785.14)

I find that the March 21, 2016 judgment has not yet been satisfied and the tenants are owed \$785.14 to the end of June, 2016, which includes recovery of the filing fee for this hearing.

I further order that rent be payable in the amount of \$800.00 per month until such time as the repairs ordered in the March 21, 2016 hearing are completed. I further order that commencing with the month following the month that the repairs ordered are completed, rent in the amount of \$1,050.00 per month will resume.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 26, 2016 is hereby cancelled and the tenancy continues. The landlords' application for an Order of Possession is dismissed.

The landlords' application for a monetary order for damage to the unit, site or property is hereby dismissed.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The landlords' application for an order that the tenants pay the landlords' filing fee to the Residential Tenancy Branch is hereby dismissed.

I hereby order that rent in the amount of \$800.00 per month is payable until the repairs ordered on March 21, 2016 are completed, and rent will be payable in the amount of \$1,050.00 per month commencing with the month following the month that the said repairs are made.

These orders are final and binding and may be enforced.

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: June 03, 2016

Residential Tenancy Branch