



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, FF, MNDC, MNR, RP, OPR, MNR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlords application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent and request for a Monetary Order for outstanding rent and recovery of the filing fee.

The tenant application is a request to cancel the Notice to End Tenancy, a request for a Monetary Order, a request for an Order for the landlord to make repairs, and a request for recovery of the filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

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

All 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 tenant has put on his 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 Notice to End Tenancy and recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

I will also deal with the landlords request for an Order of Possession, and an Order for outstanding rent and recovery of the filing fee.

Background and Evidence

This tenancy began on August 29, 2015 with a monthly rent of \$1100.00, due on the first of each month.

The landlords testified that the tenant failed to pay the May 2016 rent, and therefore on May 12th 2016 they personally served the tenant with a 10 day Notice to End Tenancy.

The landlord's further testified that tenant failed to comply with the notice to end tenancy and has failed to pay any further rent and therefore as of today's date there is a total of \$2200.00 in rent outstanding to the end of June 2016.

The landlords are therefore requesting an Order of Possession for as soon as possible and are requesting an Order for the outstanding rent, plus rent for the month of July 2016 as they believe they will lose that rent as well.

The tenant testified that the landlord agreed to allow him to do renovations to the rental unit and deduct the money from the rent. The tenant further stated that originally the landlord agreed for him to change the taps in the bathroom; however when taking apart the drywall to replace the taps it was found that there was a significant amount of mold therefore requiring extensive renovations to the bathroom.

The tenant further testified that when he informed the landlord of the need for further renovations the landlord verbally agreed to allow him to do the renovations and deduct the money from the rent.

In response to the tenants testimony the landlord testified that there was never any agreement for the tenant to do extensive renovations in the bathroom of the rental property and deduct the money from the rent, and in fact he was never even told that this work was to be done, it was completely unauthorized. He further stated that the only work there was authorized was changing of the taps, and nothing further.

The landlord further testified that the tenant was supposed to give them an invoice for changing the taps, however one was never forthcoming, and the first he ever heard about this claim for renovations was with the application for dispute resolution.

Analysis

It is my finding that the tenant has not met the burden of proving that there was ever any agreement to do major renovations to the bathroom in the rental unit and deduct the money from the rent.

The landlord denies ever agreeing to any such renovations, or even knowing about them, and had the landlord actually agreed to such renovations I find it most likely that the deduction from the rent would have been made long ago, rather than coming forward only after the tenant received a notice to end tenancy for nonpayment of rent.

Therefore it's my decision that the tenant does not have the right to withhold any rent and since there is still \$2200.00 in rent outstanding I will not cancel the Notice to End Tenancy, and I will be issuing an Order of Possession to the landlord pursuant to section 55 of the Residential Tenancy Act.

I also allow the landlords claim for the outstanding rent and recovery of the filing fee.

I will not allow the landlords claim for July 2016 rent as this portion of the claim is premature since we do not know at this time whether the landlord will lose the rental revenue for that month.

Conclusion

Landlord's application

Pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession that is enforceable two days after service on the tenant.

Pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order in the amount of \$2300.00.

The landlords claim for July 2016 lost rental revenue is dismissed with leave to reapply.

Tenant's application

The tenant's application to cancel a Notice to End Tenancy is dismissed without leave to reapply.

I will not issue any Order for repairs to the rental unit as this tenancy is ending.

The tenant's request for a monetary claim against the landlord is dismissed with leave to reapply.

The tenant's request for recovery of his filing fee is dismissed.

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 22, 2016

Residential Tenancy Branch