



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNR, OPR

Introduction

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

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

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for a Monetary Order for \$975.00.

Some 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 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

The issues are whether or not to cancel or uphold a Notice to End Tenancy, and whether or not either of the parties has established monetary claim against the other.

Background and Evidence

The parties agree that this tenancy began on June 15, 2015 and that the present monthly rent is \$1200.00, due on the first of each month.

The landlord testified that the tenant has failed to pay any rent for the months of July 2016, August 2016, and now September 2016.

The landlord further testified that the tenant was served with a 10 day Notice to End Tenancy on August 2, 2016 but has failed to comply with that notice.

The landlord therefore states that he is requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding rent totaling \$3600.00.

The tenant testified that he has not been living in the rental unit since June of 2016 and therefore does not believe he should have to pay any further rent.

The tenant further testified that he had informed the landlord that he had vacated the rental unit.

The tenant further testified that the landlord had illegally raised the rent during the tenancy as well and he therefore believes the illegal rent increase should be refunded.

The tenant further testified that he did a substantial amount of cleaning and repairs at the rental property for which he was never paid, and he is therefore requesting a

Monetary Order from the landlord in the amount of \$975 to reimburse him for that cleaning and repairs.

In response to the tenant's testimony the landlord testified that there was never any illegal rent increase and that the tenant was never required to do any repairs at the rental property, nor was there any agreement to pay the tenant for cleaning or repairs.

The landlord further testified that he has never received any invoices from the tenant for emergency repairs.

The landlord further testified that the tenant has never informed him that he had moved out of the rental unit, and in fact the landlord believes it's quite clear that the e-mails he's provided show that, in September 2016, the tenant was still in the rental unit.

Analysis

It is my finding that the landlord has shown, on the balance of probabilities, that the tenant was still living in the rental unit in the month of September 2016. The landlord has supplied copies of e-mails where the landlord asks the tenant if he is planning to move out, and if so to let them know so they can make arrangements, to which the tenant replies "Sure Jay, whatever you think".

I find it hard to believe that the tenant would not have reminded the landlord at that time that he had already vacated, had he actually vacated as he claims in his testimony.

Therefore it is my decision that I will allow the landlord's full claim for outstanding rent as the tenant has failed to vacate the rental unit and therefore he should reasonably have anticipated that, more rent would be due.

Further, it is my finding that the tenant was served with a valid 10 day Notice to End Tenancy and has failed to comply with that notice, and I therefore I will not allow the

tenants request to cancel the notice, and I allow the landlords request for an Order of Possession for as soon as possible.

I also allow the landlords request for recovery of the \$100.00 filing fee.

I deny the tenants request for a Monetary Order as the tenant has provided no evidence in support of his claim of an illegal rent increase, nor has the tenant provided any evidence to show that he has done any emergency repairs at the rental unit or that the landlord ever agreed to pay the tenant for any work done at the rental property.

Conclusion

The tenant's application is dismissed in full without leave to reapply.

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

Pursuant to sections 67 & 72 of the Residential Tenancy Act I have issued a Monetary Order in the amount of \$3700.00.

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: September 29, 2016

Residential Tenancy Branch

