



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: CNR, MNDC, RP, LRE, FF

Landlord's application: MNR, OPR, FF

Introduction

This was the hearing of an application by the tenants to cancel a 10 day Notice to End Tenancy for unpaid rent and for other relief including a monetary award, a repair order and an order setting conditions on the landlord's right to enter the rental unit. The landlord applied for an order of possession and a monetary award for unpaid rent. The hearing was conducted by conference call. The tenants and the landlord called in and participated in the hearing.

Issue(s) to be Decided

- Should the Notice to End Tenancy be cancelled, or is the landlord entitled to an order of possession pursuant to the Notice to End Tenancy?
- Is the landlord entitled to a monetary award for unpaid rent?
- Are the tenants entitled to a monetary award and if so, in what amount?
- Are there grounds to restrict the landlord's right to enter the rental property?
- Should the landlord be ordered to make repairs to the rental unit?

Background and Evidence

The rental unit is a house in Surrey. The landlord testified that she purchased the house and after completing the purchase she had the house professionally cleaned before advertising it for rent. She advertised the house for rent on the internet and entered into a tenancy agreement with the tenants for a 24 month fixed term tenancy commencing November 1, 2016 with rent in the amount of \$2,100.00 payable on the first of each month. The agreement provided for a security deposit of \$1,050.00 and a total pet deposit of \$1,000.00. The tenants did not pay the pet deposit. They were

supposed to pay the pet deposit in two instalments of \$500.00 each. The landlord testified that the tenants paid \$3,000.00 upon signing the agreement; they agreed to pay the balance of \$150.00 for November rent and \$1,000.00 for the pet deposit in two instalments on November 1st and December 1st.

The landlord testified that the tenants did not pay December rent when it was due on December 1st, although the male tenant made promises that he would pay the rent and excuses as to why it had not been paid. The tenant then sent a letter to the landlord dated December 4, 2016 wherein he complained about repairs needed to the rental unit. He listed 12 items as follows:

1. Upstairs washroom shower (broken and not functional)
2. Upstairs washroom door lock (missing lock)
3. Downstairs washroom door/Sink (damaged)
4. Garage doors and remote (damaged and not functional)
5. Laundry room door (damaged)
6. Kitchen sink taps(leaking)
7. Back Yard (incomplete landscaping/cleaning)
8. Jacuzzi (not clean and not functional)
9. Swimming pool (not clean and not functional)
10. Multiple holes on walls
11. Swimming pool missing safety cover
12. Pest issues (Multiple mice found)

The tenant said he wanted a credit for the past month's rent and the return of his \$1,000.00 security deposit. He said: "Note: December rent on hold (some adjustments required) until everything is completed as per rental agreement and our discussions."

The tenants communicated with the landlord's brother and the landlord responded to the tenant's complaints by message dated December 5, 2016. She said in her message:

I am telling you over and over that we can meet and go through the house and see what needed to be done. since this is the first time you are mentioning all this and holding the rent at the same time, it is not right. I can see you doing this if you were living there for long and was being ignored by us. I have mortgage payments to make too. I am well aware of my responsibilities. I am surprised to see this list of things since you never mentioned anything prior to this. We brought the landlord in to tell you about the pool.

If there is anything that is supposed to be done by us, will be taken care of but you were suppose to pay pet deposit of \$500.00 on Nov 1st and did not. that is when you moved in and there was no reason not to pay that. and remaining with

Dec's rent. We can meet today sometime. I have to see what can be done and only then I can tell you what can be done at what time but if there is any of my responsibility, it will be taken care of.

Thank you (reproduced as written)

The tenant responded by e-mail. He said he is available to meet on Sundays only. He said that he wanted a rent adjustment on the last month and this month until the pool/Jacuzzi are fully functional because they are included in rent. The tenant said further that:

If I dont hear or receive written communication by Sunday December 11th, I'll consider that you are not willing to full fill my request and will start looking for some other rental property.

If I terminate my lease then I would expect you to return my damage deposit and Partial payment as a credit from Nov rent rent due to lack of attention/commitment as per our lease agreement and you may also have to pay for our hotel/rental accumudation until we find something in same area.

Ladlord and Tenant relations are build on trust and your brother and you have breach our trust

I paid \$3000 in advance but didnt get what we signed for. (reproduced as written)

The landlord testified that she received no verbal or written complaints about any needed repairs before she received the December 4th letter. The landlord testified that the tenant was personally served with a 10 day Notice to End Tenancy for unpaid rent dated December 8, 2016. The landlord made an attempt to serve the Notice to End Tenancy a few days earlier and left an incomplete copy. They left the notice at the rental unit with the tenant's son. The tenants called the police and reported that a home invasion was in progress, causing an armed police response to the rental unit. The landlord served a second Notice to End Tenancy on December 8, 2016. At the hearing the tenants acknowledged that they received the Notice to End Tenancy, but they denied that they were personally served with the Notice. The tenants applied to dispute the 10 day Notice to End Tenancy after they received the first copy of the Notice.

At the hearing the tenant said that the landlord failed to provide what was agreed under the tenancy agreement. He said the pool and Jacuzzi did not work. There were bathrooms that could not be used and one of the four bedrooms could not be used because the tenants found a dead mouse in the room and his son would not stay in the room for that reason.

The tenant said that he and his family wanted to stay in the unit and continue the tenancy, but he insisted that he should be compensated and should receive a refund of

his rent and security deposit of \$3,000.00. He said that this was necessary in order to “teach the landlord a lesson”. He acknowledged that no rent was paid for December and January, but it was his position that he should not have to pay rent for those months.

The landlord testified the former owner advised her that the swimming pool was in working order when she purchased the property and she is ready to perform any necessary repairs upon notice from the tenant and after has had an opportunity to inspect the rental unit. She had the hot water heater repaired immediately when informed of the problem, but as to the other matters in the tenant’s letter, they were brought up only after the tenants promised and failed to pay December rent. The parties were given an opportunity to discuss a resolution of the dispute during the hearing. I was not party to those discussions. The landlord informed me that the discussions were fruitless because the tenant insisted that he was not responsible for rent that is due. She requested an order of possession pursuant to the 10 day Notice to End Tenancy and a monetary award for the outstanding rent.

Analysis

The *Residential Tenancy Act* provides by section 26 (1) that 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. The *Residential Tenancy Act* permits a tenant to deduct an amount from a rent payment without first obtaining an order only when the tenant has paid for emergency repairs as defined by the Act and the landlord has not reimbursed the tenant after the tenant has provided written particulars to the landlord. The only other exception to the requirement to pay rent is contained in section 43(5) of the Act; it provides that: If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenant has not performed any repairs and there has been no rent increase since commencement of the tenancy. The tenants claimed to be entitled to a refund of the rent and security deposit paid, but I find there is no merit to the tenants’ claim. The tenants did not notify the landlord in writing of any problems until December 4th and they have not cooperated with the landlord to have the claims addressed. Some of the matters complained of appear trivial and, given the season and the inclement weather, the complaint about lack of use of an outdoor swimming pool is a poor excuse for a refusal to pay rent. The tenants have not paid any rent for December or January. The tenants have not established that he has any basis for withholding rent payments and I find that they have not provided evidence of any ground that would excuse them from their obligation to pay rent. The tenants’ application to cancel the 10 day Notice to End

Tenancy for unpaid rent is therefore dismissed without leave to reapply. Because the tenancy has ended there is no basis for any repairs to be ordered. I find as well that the tenant has not given the landlord proper notice or opportunity to investigate and make repairs as needed. The tenants' application for a monetary award and for other relief including repair orders is dismissed without leave to reapply.

Section 55 of the *Residential Tenancy Act* provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,
- (a) the landlord makes an oral request for an order of possession, and
 - (b) the director dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application to dispute the landlord's Notice to End Tenancy. The landlord made an oral request for an order of possession at the hearing. And she has made her own application for an order of possession. Pursuant to section 55 I grant the landlord an order for possession effective two days after service upon the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

The landlord claimed unpaid rent for November in the amount of \$150.00 and payment of the \$1,000.00 pet deposit as well as rent for December in the amount of \$2,100.00. Because the tenancy is ending there is no basis for me to make an order requiring the tenant to pay a pet deposit and this portion of the landlord's claim is denied. The tenants acknowledged at the hearing that they have not paid rent for January, although they continue to occupy the rental unit.

Section 4.2 of the Rules of Procedure provides as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord requested payment of January rent at the hearing and based on the tenants' admission at the hearing that January rent has not been paid I amend the application to include a claim for January rent in the amount of \$2,100.00.

I find that the landlord is entitled to a monetary award in the amount of \$4,350.00, being the \$150.00 balance for November rent plus rent for December and January in the amount of \$2,100.00 for each month. The landlord is entitled to recover the \$100.00 filing fee for this application for a total award of \$4,450.00. I order that the landlord retain the security deposit of \$1,050.00 in partial satisfaction of this award and I grant the landlord an order under section 67 for the balance of \$3,400.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The tenants' application has been dismissed. The landlord has been granted an order of possession and a monetary order in the amount stated.

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: January 12, 2017

Residential Tenancy Branch