



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, ERP, OPT, FF

Introduction

On January 16, 2017, the Tenants made an Application for Dispute Resolution requesting: to cancel a Notice to End Tenancy; an order that the Landlord make emergency repairs; a monetary order for the cost of emergency repairs; for an order of possession for the rental unit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties confirmed that they received the documentary evidence that I have before me. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for dispute resolution jointly in response to the Landlord's notices to end tenancy that named both Tenants. "Co-tenants" are two or more tenants who rent the same property under the same tenancy agreement. "Tenants in common" is when tenants share the same premises under separate tenancy agreements with a Landlord. A tenant in common has the same rights and responsibilities as an ordinary tenant and is not responsible for debts and damages relating to the other tenancy. I find that the Tenants named in the Application have separate agreements with the Landlord and are "tenants in common".

Generally speaking, tenants in common cannot file a joint Application for Dispute Resolution; however, in this case they were responding to the Landlord's notices that incorrectly named them as co tenants.

The Landlord testified during the hearing that a 10 Day Notice to End Tenancy for Unpaid Rent dated January 6, 2017, was completed incorrectly and she rescinds the Notice. The Landlord issued two additional notices to end tenancy as discussed in the background of this decision.

The Tenants' monetary order worksheet contains monetary claims that are higher than the amount listed within the Tenants' Application. Since the Tenants did not amend their

Application to include the higher monetary amount, and did not serve the amended application on the Landlord, the Tenants' claim is limited to the amount stated within the Tenants' Application.

Issues to be Decided

- Should the Notices to end tenancy be cancelled?
- Should the Tenants be granted an order of possession?
- Are the Tenants entitled to a monetary order for the cost of emergency repairs?
- Is the Landlord required to make emergency repairs?

Background and Evidence

The owner of the rental unit, J.U. testified that he rents the entire rental property to his Tenant M.C. The owner testified that he allows the M.C. to rent out part of the rental property to other tenants. The owner does not have a tenancy agreement with the Tenants named in the Application. M.C. rents the whole house and rents basement rooms to the Tenants.

The Landlord of the Tenants is M.C.. The Landlord M.C. testified that she entered into separate tenancy agreements with the Tenants named within the Application.

The tenancy of B.L. started in September 2012, and the tenancy of D. M. started in August 2016. The Tenants pay different amounts of rent and paid separate security deposits.

The Landlord testified that she issued a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated February 1, 2017, and named both Tenants on the Notice.

The Landlord testified that she issued a 2 Month Notice to End Tenancy for Landlord Use of Property dated December 31, 2016, and named both Tenants on the Notice.

Neither the Landlord nor the Tenants provided a copy of the notices to end tenancy listed above.

The Tenants made an application to dispute the 2 month notice to end tenancy listed above.

The Tenants and the Landlord provided a copy of a written Notice from the Tenants to end the tenancy. The written Notice, dated January 9, 2017, names both Tenants and bears the signature of both Tenants. The Notice to end tenancy states:

We are writing you this letter to inform you that we will be ending our tenancy within the suite located at the [dispute address] on or before January 31, 2017, and no later than 23:59.

The Tenant B.L. testified that the Notice was issued to the Landlord under duress. The Tenant testified that the Landlord was making the Tenants feel unsafe, so they decided to end the tenancy. The Tenant submitted that they did not notify the Landlord that they wished to rescind their Notice to end tenancy.

The Tenant B.L. testified that he never paid out any money for the cost of emergency repairs.

The Tenant B.L. testified that his claim for \$10,800.00, is due to the presence of mould in the rental unit. The Tenant testified that he noticed mould in the ceiling area of the rental unit a couple of months ago. The Tenant testified that he never notified the Landlord about the mould in the rental unit, and that this hearing is the first time the Landlord is hearing about the issue of mould.

The Tenant is requesting an order of possession for the rental unit.

Analysis

I find the Tenants named in the Application are not Tenants under the same tenancy agreement. The Landlord has a separate tenancy agreement for each Tenant and they are therefore tenants in common.

A Notice to end tenancy is not an effective Notice if it is issued in the names of Tenants who have separate tenancy agreements. A Landlord cannot end the tenancy of both Tenants, due to the non-payment of rent by a Tenant under a separate tenancy agreement. One Tenant may wish to accept a Notice and the other Tenant may wish to dispute a Notice. Tenants in common are not responsible for debts and damages relating to each others' tenancy.

I find that the notices to end tenancy issued by the Landlord to the Tenants in common are not effective notices to end tenancy, and I set them aside. The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated February 1, 2017, and the 2 Month Notice to End Tenancy for Landlord Use of Property dated December 31, 2016, are cancelled.

With respect to the Notice to end tenancy issued by the Tenants, the Residential Tenancy Policy Guideline # 11 Amendment and Withdrawal of Notices states that a Landlord or Tenant cannot unilaterally withdraw a notice to end tenancy. Only with the consent of the party to whom it was given, a notice to end tenancy may be withdrawn or abandoned prior to its effective date.

I find that there is no provision in the Act that prevents Tenants in common from ending a tenancy using the same Notice.

The Tenant B.L. testified that the Tenants never notified the Landlord that they wish to rescind their Notice to end tenancy.

With respect to duress, *Black's Law Dictionary*, St. Paul, Minn. West Publishing Co., defines "duress" as, "*..Subjecting a person to improper pressure which overcomes his will and coerces him to comply with a demand to which he would not yield if acting as a free agent.*"

There is insufficient evidence before me that the Tenants were subjected to improper pressure to overcome their will and were coerced to comply with a demand to end their tenancies. Furthermore, had the Tenants actually signed under duress, one would expect that they would have raised the issue prior to the effective date of their notice.

Based on the evidence and testimony, I find that the Tenants did not issue the Notice to end tenancy under duress.

I find that the Tenant's Notice to end tenancy is a valid Notice to end tenancy and based on the Notice, the tenancy ended on January 31, 2017.

Under section 55(2) of the Act, a landlord may request an order of possession of a rental by making an application for dispute resolution if a notice to end the tenancy has been given by the Tenant. I have no application before me from the Landlord.

Since the Tenant testified that he did not pay for emergency repairs, the Tenant's request for compensation for the cost of emergency repairs is dismissed.

The Tenants' request for \$10,800.00 in compensation for mould is dismissed. The Tenants never informed the Landlord of the problem prior to the hearing. The Tenants have not established there was a breach by the Landlord, or that the Tenants have suffered a loss, or established the value of the loss. In addition, since the Tenants have failed to mention the problem to the Landlord, they have failed to mitigate by minimizing the damage or loss.

With respect to the request for the Landlord to make emergency repairs, there is insufficient evidence from the Tenants that an emergency repair is needed and I dismiss the Tenants' request.

The Landlord was only notified of a problem with water and possible mould in the rental unit during the hearing. The Landlord is directed to investigate the reported problem and take necessary steps to deal with any problem found.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the tenancy has ended due to the Tenants own actions, I decline an order for the Landlord to repay the filing fee to the Tenants.

Conclusion

The Tenants' request to cancel the notices to end tenancy issued by the Landlord is granted. The 10 Day Notice to End Tenancy For Unpaid Rent or Utilities dated February 1, 2017, and the 2 Month Notice to End Tenancy for Landlord Use of Property dated December 31, 2016, are cancelled.

I find that the Tenant's Notice to end tenancy, is a valid notice to end tenancy, and therefore the tenancy ended January 31, 2017.

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: February 09, 2017

Residential Tenancy Branch