



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF
 CNR, MNDC, MNSD, OLC, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; 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 unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other.

The tenants opposed inclusion of the landlord's evidentiary material because the tenants only received it yesterday by email and have not had an opportunity to consider it or respond to it. Further, during the course of the hearing, one of the tenants testified that the Landlord Application for Dispute Resolution was served by email yesterday as well. The landlord testified that it was sent by an agent but returned to the landlord, and the landlord re-sent it by registered mail on May 13, 2017. The *Residential Tenancy Act* requires a person who makes an application to serve it within 3 days of making it. I am satisfied that the landlord has not done so, and I dismiss the landlord's application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for improvements or repairs made by the tenants to the rental unit?
- Have the tenants established a monetary claim as against the landlord for return of the security deposit?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy was taken over from a previous tenant, and actually commenced on November 1, 2016. Rent in the amount of \$1,300.00 per month is payable, but the tenancy agreement, a copy of which has been provided for this hearing, is silent on the date that rent is payable. The landlord also collected a security deposit from the tenants in the amount of \$600.00 by way of transfer from the previous tenant. The rental unit is a condominium suite.

The landlord further testified that the tenants had sent an email to the landlord stating that the tenants intended to pay only \$200.00 for rent for April, 2017 due to improvements the tenants had made to light fixtures and painting. The landlord disagreed and replied to that effect also saying that the rental unit was rented in its condition without any improvements. The tenants paid the landlord \$200.00, and on April 4, 2017 the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by mail. A copy has been provided and it is dated April 4, 2017 and contains an effective date of vacancy of April 20, 2017 for unpaid rent in the amount of \$1,100.00 that was due on April 1, 2017.

The landlord also submits that the rental unit was rented to the tenants in its condition, and if the tenants wanted to paint a different color, that was fine, or they simply could have chosen another apartment to rent.

The first tenant (AL) testified that on July 4, 2016 the tenants asked the landlord for an official rental contract for a period of one year and mentioned damages, including ceiling lights which were not working and the tenants were advised by the building manager to not use it because it may be dangerous and could cause a fire. The tenants sent additional emails asking for a contract but the landlord didn't respond. On August 12, 2016 the tenants sent another email to the landlord stating that the tenants would fix the damaged lighting and paint the rental unit at the tenants' expense on the condition that the tenants would be permitted to remain in the rental unit for at least a year. The landlord replied agreeing, so the tenants provided a tenancy agreement for a fixed term to commence September 1, 2016 and expire on August 31, 2017.

However, the parties didn't meet until November 29, 2016, to actually sign the tenancy agreement, but the landlord didn't have a proper tenancy agreement or condition inspection report. Since the landlord was leaving to out of country the next day, the landlord and the tenant wrote up a tenancy agreement and signed it. A copy has been provided for this hearing, and it specifies a term from December 1, 2016 to November 30, 2017 for rent in the amount of \$1,300.00 per month and a security deposit of \$600.00.

On January 10, 2017 the landlord contacted the tenants saying she had to sell the rental unit. The tenants had only invested money in the lighting and painting believing they could occupy the rental unit for a minimum of one year. In March, 2017 the landlord's real estate agent served a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy has not been provided for this hearing, however the tenant testified that it was dated March 21, 2017 and contained an effective date of vacancy of May 31, 2017. The reason for issuing it states that all of the conditions for the sale of the rental unit had been satisfied and that the purchaser asked the landlord to issue the notice because the purchaser intended to occupy it.

The tenants did not tell the landlord that they were moving out, and still have some belongings at the rental unit. The tenants still have possession of it until May 31, 2017 according to the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenants have provided a Monetary Order Worksheet setting out a claim of \$2,031.53, however the tenant testified that they claim a pro-rated amount for some of the items specified since the tenants occupied the rental unit for a few months. The tenants deducted the security deposit from April's rent because after receiving the email from the landlord about selling, the tenants were concerned of their rights because there was no formal contract, and the landlord did not live in Canada, so there may be no way to get it back. The landlord had advised the tenants of the landlord's financial situation, and considering the previous experiences with the landlord, the tenants could not trust the landlord's promises.

The tenants seek a monetary order from the landlord in the amount of \$500.00 inclusive of the unpaid rent, improvements and security deposit.

The second tenant (DEB) testified that the lighting was not safe and could have caused a fire. The tenants tried to confirm with the landlord that the tenancy would last a minimum of one year, or the tenants would not have repaired them. The landlord's refusal to enter into a proper tenancy agreement was neglectful.

Analysis

Neither party has complied with the *Residential Tenancy Act*.

The first tenant testified that the tenants moved out of the rental unit on May 14, 2017 but they still have possession of it until May 31, 2017. The tenants did not withdraw the application for an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants do not deny that they didn't pay rent in full for April, 2017, and therefore, I see no reason to cancel the notice, and it is effective April 20, 2017. The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 4, 2017 and I find that it is in the approved form. Notwithstanding the order dismissing the landlord's application, I am bound by the legislation to grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenants.

I have reviewed the handwritten tenancy agreement, and I find that it is lawful and enforceable. It is for a fixed term to commence on December 1, 2016 and to expire on November 30, 2017.

A landlord may not give a notice to end a tenancy for landlord's use of property unless it is effective no earlier than the expiry of the fixed term. If a landlord sells rental property that is the subject of a fixed term, the tenancy continues and the purchaser becomes the landlord, unless the tenants agree in writing to vacate earlier than the end of the fixed term. Therefore, the tenants didn't have to move out and could have disputed the notice.

Where a landlord serves the tenant with a notice to end the tenancy for landlord's use of property, the landlord is required to provide the tenants with the equivalent of one month of rent as compensation. That is often accomplished by not paying rent for the last month of the tenancy. In this case, the tenants paid \$200.00 in April and paid no rent in May. Therefore, I find that the tenants have received the required compensation.

A landlord does not have to return a security deposit to a tenant unless the tenant has provided a forwarding address in writing within a year after the tenancy ends. A tenant must pay rent in full even if the landlord fails to comply with the *Act*. In this case, the tenants withheld a portion of April's rent in order to be compensated for the security deposit and the expenses claimed. The tenants have not provided the landlord with a forwarding address in writing. I accept the testimony of the tenant that the landlord resides out of the country and the tenants wanted to ensure the return of the security deposit, however that is not a consideration permitted under the *Act*. The tenants will

have one year from the date the tenancy ends to provide a forwarding address to the landlord in writing, and I dismiss the tenants' application for a monetary order for return of the security deposit with leave to reapply.

I order the landlord to comply with the *Residential Tenancy Act* by returning the security deposit within 15 days of the date the landlord receives the tenants' forwarding address in writing or the date the tenancy ends, whichever is later, or apply for dispute resolution claiming against the security deposit within that 15 day period, keeping in mind that the landlord's application for a monetary order for unpaid rent is dismissed without leave to reapply. If the landlord fails to return the security deposit or make an application to keep it for some other reason, the tenants will be at liberty to apply for double the amount of the security deposit.

A tenant may make emergency repairs for health or safety reasons and request compensation for the resulting costs from the landlord if the tenants had requested such repairs prior to incurring any expense, and a landlord may take over repairs at any time. However, there is no provision in the *Act* for a tenant to make other repairs that are not emergency repairs and request compensation from the landlord. If other repairs are required and the landlord has failed to deal with them, the tenants are at liberty to make an application for dispute resolution for an order that the landlord do so within a reasonable time.

In this case, I find that the ceiling lights were faulty to the extent that they may cause a fire. The tenants have provided receipts in the amount of \$61.76 for the fixture and \$120.00 for an electrician, and I find that the tenants have established those claims. With respect to painting, I find that is not an emergency repair. The landlord disputes that the parties agreed that the tenants would paint at their own expense on the condition that the tenants could stay in the rental unit for a minimum of one year, and that is not mentioned in the tenancy agreement. Therefore, I find that the tenants have not established the claims for painting.

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

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The tenants' application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed, and I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

The tenants' application for a monetary order for return of all or part of the security deposit is hereby dismissed with leave to reapply.

I hereby order the landlord to comply with the *Residential Tenancy Act* by returning the \$600.00 security deposit to the tenants or by making an application for dispute resolution claiming against it within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants' forwarding address in writing, and if the landlord fails to do so, the tenants will be at liberty to apply for double the amount of the security deposit.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$281.76.

This order is 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: May 25, 2017

Residential Tenancy Branch