



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, MNSD, CNR, ERP, RP, MNR, MNDC, OLC, PSF, FF

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy received June 2, 2017 given for non-payment of June rent. They also seek a variety of relief in the nature of repair and compliance orders and compensation due to the quality of the water being supplied to the home.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and a monetary award for unpaid rent or occupation rent.

Rule 2.3 of the Rules of Procedure require that claims in an application must be related and that an Arbitrator may dismiss unrelated claims.

The prime claim in this matter is the fact of the ten day Notice to End Tenancy and whether or not this tenancy has ended. It is that issue that has resulted in an immediate hearing date for the parties. I exercise my discretion under Rule 2.3 and dismiss the tenants' claims but for their application to cancel the Notice. I grant them leave to re-apply immediately. This will also allow them to include in their claim, facts alleged to have occurred since their application was made.

The tenants did not receive the landlord's application for dispute resolution. For medical reasons they were away from the rental unit and did not collect the landlord's registered mail before it was returned unclaimed to the landlord. The landlord's claim for an order of possession will rise or fall on the success of the tenants' application to challenge that Notice and so it is not necessary that he even apply for that relief. The issue of unpaid rent or occupation rent is not in dispute and so will also be dealt with here, despite the issue about service of the landlord's application.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the ten day Notice a valid Notice to End Tenancy?

Background and Evidence

The rental unit is a three bedroom manufactured home. The tenancy started in August 2016. There is a written tenancy agreement for a fixed term of 36 months. The monthly rent is \$2200.00. The landlord holds a \$1000.00 security deposit.

It is agreed the tenants have not paid the June rent of \$2200.00. They have withheld rent because of the quality of the water being provided to the home. They say that the local government has directed they not ingest the water. They say one of their children has developed a rash from the water. They say they have had to purchase in excess of \$2000.00 of water for their daily requirements since moving in.

Analysis

Section 26 of the *Residential Tenancy Act* (the “*Act*”) states that a tenant must pay rent whether or not his or her landlord complies with the *Act*, the regulation or the tenancy agreement.

Though the tenants may be successful in obtaining an award of damages because of the landlord’s breach of the *Act* or tenancy agreement in failing to provide potable, safe water, they were still obliged to pay rent. They were informed of this by the Residential Tenancy Branch when they made their application.

The tenants’ failure to pay June rent entitled the landlord to issue the Notice. I find that it is a valid Notice and has resulted in this tenancy coming to an end on June 13, 2017. The landlord is entitled under s. 55 of the *Act* to have an order of possession.

At this point, and until the tenants bring a successful application for damages, the landlord is entitled to recover unpaid June rent of \$2200.00 and occupation rent of \$2200.00 for July 2017.

I decline to award anticipated loss of rent for August 2017 as it is feasible the landlord may obtain new tenant for then. If he does not he is free to re-apply for that loss.

Conclusion

The tenant's application to cancel the ten day Notice is dismissed. The remainder of their claim is dismissed but with leave to re-apply.

The landlord will have an order of possession. He will have a monetary award of \$4400.00 plus recovery of the \$100.00 filing fee for his application. There will be a monetary order against the tenants in the amount of \$4500.00.

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: July 25, 2017

Residential Tenancy Branch