



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF (Landlord's Application)
DRI, CNR, MNSD, OLC, ERP, LRE, LAT, RR (Tenants' Application)

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants on July 10, 2017 and by the Landlord on July 19, 2017.

The Tenants applied for the following reasons: to dispute an additional rent increase; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"); for the return of the Tenants' security deposit; for the Landlord to comply with the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; for the Landlord to make emergency repairs for health and safety reasons; to suspend or set conditions on the Landlord's right to enter the rental unit; and to authorise the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to retain the Tenants' security deposit and to recover the filing fee from the Tenants.

The Landlord, the Tenants, and legal counsel for the Tenants appeared for the hearing. The hearing process was explained to the parties and all testimony was taken under affirmation. The parties confirmed the service of each other's Application and evidence provided prior to this hearing.

At the start of the hearing, the Tenants were asked whether they were still residing in the rental unit. Legal counsel explained that the Tenants had vacated on or about September 21, 2017 and had verbally informed the Landlords about this.

The Landlord denied being notified of the Tenants' exit from the rental unit and stated that he still wanted an Order of Possession. As the Tenants had vacated the rental unit,

legal counsel had no objection to the Landlord being issued with an immediate Order of Possession.

Accordingly, I dismissed the Tenants' request to cancel the 10 Day Notice and grant the Landlord's request for an Order of Possession with the agreement of both parties.

Legal counsel was informed that because the tenancy had now ended, this left a number of issues on the Tenants' Application as being moot. The only matters that were left for me to deal with in this hearing were the parties' monetary claims which were before me.

In this respect, I determined the Tenants' Application for the return of their security deposit was a premature matter as the Tenants had not provided the Landlord with a forwarding address pursuant to the requirement of the Act and to allow the Landlord to deal with the return of those monies. In any case, the Landlord had already filed the request to retain the Tenants' security deposit. Therefore, the retention or return of the security deposit would have been otherwise dealt with through the Landlord's Application.

The Tenants had also claimed for a doubling penalty due to the Landlord's breach of the Act in taking more than half of the security deposit in this tenancy. While the Act prohibits a landlord from requesting a security deposit amount that is more than half the rent payable in a tenancy, the Act does not provide for any doubling penalty for this breach. The relief to a tenant in such a case would be for the Tenant to make a deduction of the overpayment from rent payable.

The parties confirmed that the Tenants had deducted the overpayment of the security deposit from July 2017 rent. Therefore, I deny the Tenant's request for any penalty as no such provision under the Act exists and the Tenants have already obtained relief with respect to this.

In relation to unpaid rent in this tenancy, both parties were given a full opportunity to provide relevant evidence and discuss that matter in the hearing. The Tenants argued that they had attempted to make rent payments to the Landlord for August and September 2017 rent but the Landlord had refused these payments. While I allowed the parties to put forward submissions on this matter, the parties did agree that the amount of rent for August and September 2017 was outstanding in this tenancy.

Section 63 of the Act allows an Arbitrator to assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Accordingly, the parties discussed the issue of outstanding rent in this tenancy, and with my assistance, were able to reach settlement. The parties wanted to enter in this agreement in full and final satisfaction of both Applications and all issues in this tenancy as follows.

Settlement Agreement

The Tenants agreed to the Landlord keeping their security deposit of \$575.00. In addition, the Tenants agreed to pay to the Landlord \$1,150.00 on or before November 7, 2017. The payment from the Tenants to the Landlord will be facilitated through the Tenants' legal counsel. However, enforcement can only be done against the Tenants. Payment arrangements will be made between the parties outside of the dispute resolution process. However, the Tenants are cautioned to retain documentary evidence of the payment made to meet the above terms.

The Landlord is issued with a Monetary Order in the amount of \$1,150.00 for enforcement in the Small Claims Division of the Provincial Court if payment is not made by November 7, 2017. Copies of the above orders are attached to the Landlord's copy of this Decision.

The parties confirmed their voluntary agreement and understanding of resolution in this manner at the conclusion of the hearing. As the agreement has been made in full and final satisfaction of this tenancy, no further Applications are permitted by the parties. These files are now closed. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 27, 2017

Residential Tenancy Branch