



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, LRE, CNR, CNC, MNDC, OPR, OPC, MNR, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 10, 2017, with amendments following, for:

1. An Order for the Landlord to comply - Section 62;
2. An Order restricting the Landlord's entry into the unit - Section 70;
3. An Order cancelling a notice to end tenancy for unpaid rent - Section 46;
4. An Order cancelling a notice to end tenancy for cause - Section 47;
5. A Monetary Order for compensation or loss - Section 67; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

The Parties confirm that on January 4, 2018 the Parties signed a mutual agreement to end the tenancy on February 1, 2018. Given this agreement I dismiss the Tenants' claims to cancel the notices to end tenancy. It is noted that the notices to end tenancy are solely in relation to

unpaid and late paid rents. To give effect to the mutual agreement I provide the Landlord with an order of possession effective 1:00 p.m. on February 1, 2018.

The Tenants confirm that they were seeking an order for compliance in relation to acts of the Landlord during the tenancy. As the tenancy will end, this claim is no longer relevant and I dismiss this claim. On January 8, 2018, the Tenants made an amendment to its application and added a claim for compensation in relation to the Landlord's actions during the tenancy. The Tenants confirm that part of the monetary amounts claimed is for moving expenses.

Rule 2.3 of the Residential Tenancy Branch (the "RTB") Rules of Procedure provides that unrelated claims made in an application may be dismissed with or without leave to reapply. As the matter of compensation for breaches by the Landlord during the tenancy is not related to the primary matters of rents payable and as the Tenants are claiming a future loss in relation to moving expenses, I dismiss the claim for compensation with leave to reapply.

The Landlord confirms that the damages to the unit have been resolved but that there may be additional claims. As the tenancy has yet to end the Tenants still have opportunity to leave the unit reasonably clean and undamaged except for wear and tear. The Landlord claims for damages to the unit are therefore pre-emptive and I dismiss this claim with leave to reapply after the tenancy ends.

Remaining Issue(s) to be Decided

Are the Tenants entitled to an order restricting the Landlord's right of entry?

Are the Tenants entitled to recovery of the filing fee?

Is the Landlord entitled to a monetary order for unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Landlord states that a written tenancy agreement was originally entered into with the Tenants and a 3rd party and that the Landlord cannot locate a copy of that agreement. The Landlord states that the 3rd party signed the agreement as one of the Tenants. The Landlord states that within a month or so of the start of the tenancy the 3rd party ended their tenancy with the Landlord who then continued the tenancy with the Tenants. The Landlord does not recall

whether another tenancy agreement was signed solely with the Tenants at this time. The Landlord states that the 3rd party paid the security deposit of \$1,350.00 and that this amount was returned to the 3rd party “probably early 2017”. The Landlord states that no security deposit was collected from the Tenants following the end of the tenancy that included the 3rd party.

The Tenants state that the 3rd party was never a part of the tenancy agreement and that only Tenant GG signed the agreement although Tenant DG was also named as a Tenant. The Tenants state that the Landlord refused to provide a copy of the tenancy agreement to the Tenants. Tenant DG clarifies that the 3rd party had only contracted Tenant DG to provide home care for an individual that lived in the unit with the Tenants. The Tenant states that they paid the security deposit of \$1,400.00 to the Landlord at the outset of the tenancy.

There is no dispute that the original rent of \$2,800.00, payable on the first day of each month, was reduced to \$2,700.00 in the summer of 2017. The Landlord states that the Tenants failed to pay rent for December 2017 and January 2018 and claims \$5,400.00. The Tenants do not dispute that these rents are unpaid and argues that they did not have to pay the rent due to the Landlord’s actions during the tenancy.

The Landlord agrees not to enter the unit prior to the end of the tenancy.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Based on the undisputed evidence that rents for December 2017 and January 2017 are unpaid and as there is no evidence of any right to withhold rent, such as an order by the RTB, I find that the Landlord has substantiated that the Tenants owe unpaid rent of \$5,400.00. As the Landlord’s application had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$5,500.00**.

Based on the Landlord’s agreement to not enter the unit, I order the Landlord to not enter the unit before the end of the tenancy without the Tenants’ express permission for such entry. As the Tenants’ application had some merit, I find that the Tenants are entitled to recovery of their

\$100.00 filing fee and I deduct this amount from the Landlord's entitlement leaving **\$5,400.00** owed by the Tenants to the Landlord.

As neither Party made any claim in relation to the security deposit I decline to make any determinations on the issue of the security deposit for the purpose of setting any security deposit off the monies owed to the Landlord by the Tenant.

Section 13(1) of the Act provides that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. As the Parties do not dispute that a written tenancy agreement was entered into at the outset of the tenancy, as there is no evidence that a subsequent tenancy agreement was entered into, as the Landlord did not provide a copy of any tenancy agreement as supporting evidence for this dispute proceedings, given the Tenants' evidence that only Tenant GG signed the tenancy agreement at the outset and accepting that the Landlord did not provide the Tenants with a copy of that agreement, I find that the Landlord has not substantiated that Tenant DG is a party to the tenancy agreement. As such I make the orders solely in Tenant GG's name.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on February 1, 2018.

I grant the Landlord an order under Section 67 of the Act for **\$5,400.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 24, 2018

Residential Tenancy Branch