



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPUM-DR MNRT MNDCT FFL CNR MNDC OLC ERP RR

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlords requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenant requested:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlords’ 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The landlords provided undisputed testimony that the tenant was served with the 10 Day Notice on October 5, 2017 by way of posting the notice on the door. The landlords submitted a proof of service in their evidence for this hearing. In accordance with section 88 and 90 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 8, 2017, three days after posting.

Issue(s) to be Decided

Should the landlords' 10 Day Notice be cancelled? If not are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to monetary compensation for unpaid rent?

Are the parties entitled to the monetary orders for which they have applied?

Are the landlords entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to perform emergency repairs?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began on April 1, 2017, with monthly rent set at \$800.00, payable on the first of every month. The landlords collected a security deposit of \$400.00, and still hold that deposit.

The landlords issued the 10 Day Notice on October 5, 2017, which was submitted in evidence. No effective date is indicated on the 10 Day Notice. The landlords testified that the tenant owes \$1,600.00 in outstanding rent, and has not paid any rent since the 10 Day Notice was issued to her. The tenant admits that September and October 2017 rent were withheld by her as she was informed by the police to withhold payment. The tenant testified that she was confused as to who the landlords were and the landlords failed to respond to her text messages, as well as refused to accept rent.

The landlords responded in the hearing that they had never refused the tenant's rent, but did not accept partial payments of \$100.00 from the tenant as the tenant failed to pay the full rent. The landlords also dispute that they had failed to respond in a timely manner to the tenant.

The landlords are seeking an Order of Possession, as well as a Monetary Order for \$1,600.00 for the outstanding rent.

Analysis

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

The 10 Day Notice to End Tenancy provided to tenant by the landlords on October 5, 2017 does not comply with Section 52(c) as the Notice does not indicate the effective date of the notice. As the 10 Day Notice fails to comply with Section 52 of the *Act*, I find that the 10 Day Notice is deficient.

Under these circumstances, I am granting the tenant's application to cancel the 1 Month Notice as I find the Notice to be invalid. The landlords' 10 day Notice, dated October 5, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

The tenant did not dispute the fact that she owed rent in the amount of \$1,600.00. The tenant did not have the right under the *Act*, or an order by an Arbitrator to withhold any portion of the rent. I, therefore, grant the landlords' application for \$1,600.00 in unpaid rent. The landlords made an application for recovery of the filing fee for this application. As the landlord was only

partially successful in their application I am allowing the landlords to recover \$50.00 for the cost of this application.

As the tenant did not make any submissions in the hearing in regards to their monetary application or request for emergency repairs, the remainder of the tenant's application is dismissed with leave to reapply.

Conclusion

The tenant's application to cancel the landlords' 10 Day Notice is allowed. The landlords' 10 Day Notice, dated October 5, 2017 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed with leave to reapply.

I issue a \$1,650.00 monetary Order in favour of the landlords, which allows the landlords to recover unpaid rent, and also allows the landlords to recover half of the filing fee for this application.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 11, 2018

Residential Tenancy Branch