



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNDL, MNRL
 CNR, ERP, OLC

Introduction

On April 25, 2018, a hearing was held to address the tenants' Application for Dispute Resolution pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46 of the *Act*;
- an order that the landlord make repairs to the rental unit pursuant to section 33 of the *Act*; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62 of the *Act*.

The hearing was adjourned until June 21, 2018 as a result of the landlord X.T.'s need for a translator to assist her due to a language barrier. The parties were advised not to submit any further evidence until the hearing was reconvened on June 21, 2018.

However, on April 26, 2018, the landlords submitted their own Application for Dispute Resolution for:

- an Order of Possession for Unpaid Utilities/Rent pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent/utilities pursuant to section 67 of the *Act*; and
- a Monetary Order for damages
- pursuant to section 67 of the *Act*.

The landlords' application was scheduled for a hearing on May 24, 2018. As both parties were in attendance at the May 24, 2018 hearing, the parties agreed to address

all aspects of their disputes at this May 24, 2018 hearing, in order to allow the June 21, 2018 reconvened hearing to be cancelled.

Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Tenant S.C. attended the hearing on behalf of the tenants. He explained that tenant F.C. was his mother and was on the tenancy agreement, but that she did not reside at the rental unit. Tenant S.C. stated that witness C.R. resides at the rental unit with him.

Landlord G.J. explained that he owns the rental property with his mother, landlord X.T. Landlord G.J. primarily spoke on behalf of the landlords.

As both parties attended the hearing, service of hearing documents was confirmed. The tenants' application and evidentiary materials had previously been provided to the landlords for the prior April 25, 2018 hearing, in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Service of Landlords' Application

The landlords confirmed that they had only served their application for the May 24, 2018 hearing to tenant S.C., which was confirmed by the tenant. As such, I find that since the landlords' monetary claim was only served to tenant S.C. in accordance with section 89 of the *Act*, only tenant S.C. can be named in any monetary order provided to the landlords.

Preliminary Issue – Amendment of Landlords' Application

At the outset of the hearing, the landlords amended their application to withdraw the part of their claim against the tenants pertaining to unpaid utilities. They also requested to amend their application to include unpaid rent in the amount of \$1,500.00 that was due May 15, 2018. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlords' application to withdraw the part of their claim seeking payment of utilities since it would not be prejudicial to the tenants. I also amended the landlords' application to include unpaid rent in the amount of \$1,500.00 for the month of May 2018

since the tenants continue to reside in the rental unit and can reasonably have anticipated that they would be held responsible for this rent payment.

Issue(s) to be Decided

Should the landlords' 10 Day Notice to End Tenancy for Unpaid Rent be cancelled? If not, are the landlords entitled to an Order of Possession on the basis of the 10 Day Notice?

Should the landlords be ordered to make emergency repairs to the rental unit?

Should the landlords be ordered to comply with the *Act*, regulations or tenancy agreement?

Are the landlords entitled to a monetary award for unpaid rent?

Are the landlords entitled to a monetary award for damages?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

Both parties agreed that this fixed-term tenancy began on March 15, 2017 and had a scheduled end date of March 14, 2018. The tenancy agreement shows that the tenancy then converts to a month-to-month basis. The initial monthly rent was set at \$1,650.00, however by May 2017 the rent was reduced to \$1,500.00 upon the tenants' request. Tenant S.C. explained that after they moved in, they discovered issues regarding the poor condition of the rental unit, which they hadn't noticed when they initially viewed the property. They felt that the rental unit was not worth the full rent price and negotiated with the landlords for a rent reduction. This was confirmed by the landlords.

The tenants paid a security deposit of \$825.00 and a pet deposit of \$300.00 at the beginning of the tenancy. There was no condition inspection report done at move-in.

The Monetary Order Worksheet submitted into documentary evidence by the landlords, shows that the landlords are seeking \$12,000.00 (eight months x \$1,500.00 monthly

rent) in unpaid rent from the tenant. The landlords allege that the tenants did not pay any rent between September 2017 to May 2018.

On March 10, 2018, the landlord's agent at the time (now former agent) personally served Tenant S.C. with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice). The notice stated that \$9,000.00 in rental arrears was owed as of February 15, 2018. Tenant S.C. confirmed receipt of the 10 Day Notice.

On March 13, 2018, the tenants filed an application with the Residential Tenancy Branch to dispute the landlords' 10 Day Notice. Tenant S.C. claims that they did pay rent in cash to the landlords' former agent for the period between September 2017 to February 2018.

The landlords called as a witness their former agent C.X., who was responsible for collecting rent from the tenants during this time. Witness C.X. testified that during the period from September 2017 to February 2018, she had tried to reach the tenants by phone to arrange a time to pick up rent but was unable to contact the tenants as she stated the tenants had changed their phone number. She stated that she attended at the rental unit on one occasion during this period of time, in November 2017, to try and collect rent, but that the tenants were not home at the time. Witness C.X. stated she did not collect rent from the tenants during these months.

Tenant S.C. disputed the allegation that he had changed his phone number. He called witness C.R. who resides in the rental unit. Witness C.R. testified that she and the tenant paid their rent in cash to the landlords' former agent C.X. during the months between September 2017 to February 2018.

Tenant S.C. agreed that they have not paid rent from March to May 2018 in the amount of \$4,500.00 due to all the issues they have had with the poor condition of the rental unit and the landlords' refusal to address necessary repairs. Tenant S.C. stated that they are moving out on June 1, 2018.

Tenant S.C. called into question the landlords' motivation in serving them with a 10 Day Notice on March 10, 2018, just days before the fixed term tenancy end date of March 14, 2018. The tenant alleges that it would not make sense for the landlords to wait six months to issue a 10 Day Notice if the tenant had not paid rent since September 2017. The tenant stated that he is paid in cash for his work and that he pays cash for rent, except for at the beginning of the tenancy where he once paid by e-transfer. He stated that he has never received a rent receipt from the landlords.

The landlords claim that the tenants continue to reside in the rental unit without paying rent, despite the move out end date of March 14, 2018 noted in the fixed term tenancy. The landlords submitted written statements into documentary evidence stating that they wanted the tenants to move out at the end of the fixed term period of March 14, 2018.

The landlords stated they did not have any record of receipts for rent received from the tenant, even from the first six months of the tenancy during which time it is undisputed that rent was paid. The landlords did not submit a rent ledger into evidence to support their claim. The landlords stated that they were out of the country for most of the tenancy and that it was their former agent's responsibility to take care of the rental unit, including dealing with rent.

Tenant S.C. provided testimony regarding a number of repair issues that were not addressed during the tenancy, including issues with rodents, a faulty hot water tank, and a leaky roof that resulted in mold developing in the rental unit. Tenant S.C. submitted photographic evidence in support of his claims.

Tenant S.C. stated that he had originally reported the issue of the leaking roof to the landlords shortly after moving into the unit in March 2017. The landlords patched the leak in April 2017, however Tenant S.C. stated that the patch job did not hold up and the roof began to leak again starting in the fall of 2017 throughout the winter. The tenant testified that the landlords only attended to address the leaking roof in March 2018 when they sent insurance brokers to the rental unit to assess if the leak could be covered by insurance.

The landlords claim that the tenants would not allow them access to the rental unit to address the leaking roof. I asked the landlords to provide specific dates when they provided notice to the tenant to access the rental unit and were denied access. The landlords stated that it was many times.

I asked again for specific dates when they tried to access the rental unit to fix the leaking roof. The landlords continued to state that it was many times but they could not remember any dates. Tenant S.C. testified that he had allowed the landlords access to the unit on many occasions and specifically noted the circumstances such as to fix the stove, to show the rental unit, and when the insurance brokers needed access. The landlords confirmed that the tenants had provided access to the rental unit on these occasions.

Analysis

I have addressed the multiple claims in this matter by issue, as follows:

Should the landlords' 10 Day Notice to End Tenancy for Unpaid Rent be cancelled? If not, are the landlords entitled to an Order of Possession on the basis of the 10 Day Notice?

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. If a tenant fails to pay rent when due, section 46 of the *Act* permits a landlord to end the tenancy by issuing proper written notice to end tenancy using a 10 Day Notice to End Tenancy.

A tenant who receives a 10 Day Notice to End Tenancy under section 46 has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In this case, I find that the tenants were served with a 10 Day Notice on March 10, 2018 and filed their application to dispute the notice on March 13, 2018. Accordingly, the tenant complied with the five-day time limit provided by section 46 of the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

The landlords' failed to submit any documentary evidence, such as a rent ledger to support their claim that the tenants had not paid rent from September to February 2018 in the amount of \$9,000.00.

Both parties agreed that, for the period of the tenancy where rent payment was not in dispute, the tenant paid his rent by cash, except for one payment by e-transfer. Tenant S.C. stated he was never provided with receipts. The landlords did not submit any rent receipts into documentary evidence. They acknowledged that they were out of the country for much of the time during the tenancy and entrusted an agent to deal with issues related to the tenancy, including rent collection, so they could not confirm whether or not receipts were provided.

The landlords called their former agent to provide testimony that she had not collected rent from the tenants during this time. The former agent stated that she was unable to reach the tenants by phone or text message to arrange rent pickup, and she had only

attended at the home once during that period to attempt to collect rent but stated no one was home. Tenant S.C. called a witness who lives with him at the rental unit who provided testimony that they had paid rent to the agent during the period in question.

Further to this, the landlords submitted statements into documentary evidence stating that because the tenancy agreement was for a fixed term ending March 14, 2018, they wanted the tenants to move out. This is in spite of the fact that the tenancy agreement was to convert to month-to-month tenancy at the end of the fixed term.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regard to the landlords' claim for rent in the amount of \$9,000 from September 2017 to February 2018, and considering Tenant S.C.'s testimony that he paid the landlords rent in cash during this time, the burden of proving that rent was not paid in cash, as claimed by the tenant, rests with the landlord.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts can help to establish when a rent payment has not been made. When a landlord regularly provides receipts for cash payments there is an expectation that a tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment, it lends credibility to a landlord's claim that a cash payment has not been made.

When a tenant has previously made cash payments and has never been provided with a receipt, there is no expectation that the tenant can provide a receipt for such a payment. In these circumstances the landlord's failure to provide receipts for cash payments made during the tenancy can significantly impair their ability to prove that the tenant did not pay a portion of rent.

In this case, the landlords did not submit any other evidence, such as a copy of a payment ledger, to corroborate their claim that the tenant did not pay rent during the period from September 2017 to February 2018.

In weighing the testimony and evidence of both parties, I find that the landlords have not proven, on a balance of probabilities, that the tenants failed to pay the \$9,000.00 in rent stated on the 10 Day Notice. I make this finding on the basis that I found the tenants' evidence more reliable than the landlords, due to the lack of any documentary evidence submitted by the landlords such as a rent ledger or receipts for cash rent payments to show that rent was reliably accounted for. The landlords did not answer questions

posed to them about the provision of rent receipts or the tenants' requests for repair of significant maintenance issues, but instead responded by saying that they were out of the country and had an agent deal with the rental unit matters. Further to this, the landlords admitted that they wanted the tenants to vacate the rental unit at the end of the fixed term tenancy agreement on March 14, 2018.

Consequently, as I have found the landlords' 10 Day Notice to be unproven and therefore invalid, I allow the tenants' application to cancel the 10 Day Notice. This tenancy continues until ended in accordance with the *Act*.

Are the landlords entitled to a monetary award for unpaid rent?

I have already found that the landlords did not provide sufficient evidence to overcome, on a balance of probabilities, the disputed testimony regarding the tenants' payment of rent from September to February 2018 in the amount of \$9,000.00. Therefore, I find that the landlords are not entitled to a monetary award for rent during this period of the tenancy.

Tenant S.C. acknowledged that they did not pay rent to the landlords for the months of March, April and May 2018, totalling \$4,500.00 in rent owing.

Based on the undisputed testimony provided, I find that the landlords are entitled to a monetary award for unpaid rent in the amount of \$4,500.00 for the period of the tenancy from March to May 2018.

Should the landlords be ordered to make emergency repairs to the rental unit?

The tenants requested an order that the landlord make emergency repairs related to a leaking roof, associated mold, and a rodent issue.

The tenants' application noted the leaking roof, mold (as a result of the leaking roof), and a rodent problem as issues requiring emergency repairs. Of these, only a leaking roof could in certain circumstances meet the criteria of an "emergency repair" pursuant to section 33 of the *Act*. However, in this case, the leaking roof has been slowly leaking over an extended period of time and therefore does not meet the criteria as an emergency repair.

As the tenants' claim does not meet the criteria provided in section 33 of the *Act*, and because Tenant S.C. stated that they are moving out of the rental unit as of June 1, 2018, I dismiss this portion of the tenants' application.

Should the landlords be ordered to comply with the *Act*, regulations or tenancy agreement?

The tenants' application requested an order for the landlords to comply with the *Act*, regulations or tenancy agreement to require them to provide proper notice to access the rental unit.

The tenants submitted insufficient documentary or testimonial evidence in support of their claim for me to conclude that the landlord requires an order to comply with providing proper notice to access the rental unit. Further to this, Tenant S.C. testified that they are moving out of the rental unit as of June 1, 2018. Therefore, I dismiss this portion of the tenants' application.

Are the landlords entitled to a monetary award for damages?

The landlords did not include any particulars regarding other damages for which they were seeking compensation. The Monetary Order Worksheet submitted by the landlords lists unpaid rent and utility costs as comprising their total monetary claim. As the landlords withdrew the portion of their claim related to utilities, and I have already addressed their other claims for unpaid rent in the sections above, I dismiss this portion of the landlords' application.

Conclusion

The tenants were successful in their application to dispute the landlords' 10 Day Notice. I order that the landlords' 10 Day Notice to End Tenancy for Unpaid Rent issued on March 10, 2018 is cancelled and of no force, and this tenancy shall continue until it is ended in accordance with the *Act*.

I dismiss, without leave to reapply, the tenants' application for an order for emergency repairs and an order for the landlords to comply with the *Act*.

The landlords were partially successful in their application for unpaid rent. I issue a Monetary Order in the landlords' favour against Tenant S.C. in the amount of \$4,500.00 for the amount owing in unpaid rent from March to May 2018.

The landlords are provided with this Order in the above terms and the Tenant S.C. must be served with this Order as soon as possible. Should Tenant S.C. 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.

I dismiss, without leave to reapply, the landlords' application for an Order of Possession and a monetary order for damages.

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: June 12, 2018

Residential Tenancy Branch