



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNC OPR OPN MND MNR RP LRE FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* ("the Act"). The landlord applied for: an Order of Possession pursuant to section 55; a monetary order for unpaid rent and damage to the unit pursuant to section 67; and authorization to recover the filing fee for this application pursuant to section 72. The tenants applied to cancel the landlord's Notices to End Tenancy pursuant to section 46 and 47 and to recover their filing fee pursuant to section 72. The tenants amended their application to include a request that the landlord make repairs to the rental unit pursuant to section 33 of the Act; and that the landlord's access to the rental unit be restricted pursuant to section 70 of the Act.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord attended the hearing at the start (11:00 a.m.) and the tenants attended the hearing 10 minutes after the start (11:10 a.m.). Each party confirmed receipt of the other party's materials submitted as evidence for this hearing, including the tenants' amendment to their original application.

At the outset of the hearing, the tenants testified that they had vacated the rental unit and therefore withdrew the portion of their application to cancel the landlord's Notices to End Tenancy and for repairs to the rental unit. The landlord withdrew the portion of her application requesting an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to recover the filing fee for her application?

Background and Evidence

This tenancy began August 1, 2017 as an 8 month fixed term tenancy with a rental amount of \$2250.00 (plus monthly utilities) paid on the first of each month. A copy of the residential tenancy agreement and the addendum to the agreement were submitted as evidence at this hearing. The tenants vacated the rental unit on April 23, 2018 and the keys were returned to the landlord on April 24, 2018. The landlord testified that the tenants gave notice approximately 4 days before they vacated the rental unit: she was unable to provide the exact date. The tenants testified, referring to their documentary evidence that they gave notice on April 10, 2018 after receiving a 10 Day Notice to End Tenancy on April 1, 2018. The landlord continues to hold an \$1125.00 security deposit paid by the tenants on July 16, 2017. The tenants did not provide a forwarding address to the landlord. The landlord sought \$6750.00 from the tenants for unpaid rent and testified that there were also outstanding utility bills owed by the tenants.

The landlord testified that \$2250.00 rent for April 2018 was not paid by the tenants. The tenants testified that they paid rent by cheque and that the landlord never cashed the April 2018 rent cheque. The tenants submitted that, in fact the landlord should return their March and April rental payments in compensation for their loss of quiet enjoyment. They testified that the rental unit was moldy and that the landlord harassed them with notices to end tenancy and visits to the rental unit property. The tenants conceded that they likely owed approximately \$700.00 in outstanding utility bills during the tenancy to the landlord.

The landlord's evidence package included letters from a lawyer to the tenants on her behalf. The letters were dated April 16, 2018 and April 19, 2018. The letter dated the 16th addressed the tenants' failure to pay rent and requested that the rent be paid or that the tenants vacate the unit in accordance with a 10 Day Notice issued by the landlord. The letter dated April 19, 2018 addressed the tenants' lack of notice that they intended to vacate the unit and the consequences of their short notice to the landlord. Both letters requested payment of the outstanding rent.

Witness AD testified on behalf of the landlord. The witness is a neighbour and friend of the landlord. She testified that she was present with the landlord when the landlord requested payment of the April rent and the landlord was told by the tenant that he had

mailed it to her. She testified that she was present with the landlord when the tenant refused to provide proof he had mailed a rent cheque and refused to provide another cheque.

The tenants submitted evidence showing photographs of the residence, as well as a significant amount of evidence relating to the landlord's entry or notices to enter the rental unit. I will not refer to the tenants' application for an order regarding the landlord's access to the rental unit further as that application is now moot – the tenants have vacated the rental unit. Further, I dismiss with leave to reapply the tenants' request for a monetary order against the landlord. The tenants applied to amend their application on April 30, 2018. However, it is at the end of the handwritten paragraph on their amendment form where the tenants wrote that they have "given two notices of an early end to tenancy for breach of a material terms and seek damages for the loss of quiet enjoyment in March and April."

Pursuant to section 59(2)(b) of the Act, an application for dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose is to provide the respondent (in this case the landlord) with enough information to know the applicant's case to respond and make submissions in relation to their monetary claim. In this case, I find that the tenants did not sufficiently set out the details of their claim for compensation in a manner which allowed the landlord to respond meaningfully. Therefore, in all of the circumstances, I dismiss the tenants' monetary claim with leave to reapply.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent (\$2250.00 per month) in March and April 2018. I accept the landlord's testimony, consistent with her witness' testimony and her documentary evidence including letters from her lawyers reflecting the timeline of her requests for rental payment, that the tenants did not pay rent in March 2018 and that, after the issuance of the 10 Day Notice by the landlord to the tenants on April 1, 2018, the tenants remained in the rental unit but did not pay rent in April 2018.

The tenants stated, at this hearing, that they never missed a rent payment. However, I find that the tenants provided insufficient evidence to support their claim that they sent the March 2018 rent cheque via registered mail and that the landlord has not cashed

the cheque. The tenants did not dispute that they remained in the rental unit until April 23, 2018 and returned the landlord's keys on April 24, 2018. Therefore, in accordance with section 37 of the Act, this tenancy ended on April 24, 2018. As the tenants remained in the rental unit for 3 weeks of the month of April 2018, I find that they are required to pay rent for the entire month of April 2018. I find that it would be impractical for the landlord to attempt to re-rent the unit in April, particularly given that she did not receive notice from the tenants until mid-April 2018 that they intended to vacate the rental unit.

The landlord testified that she re-rented the unit for May 1, 2018. She testified that she has outstanding utility bills owed by the tenant however she did not make an application with respect to the utilities. She also applied for a monetary order with respect to damage to the rental unit at the end of this tenancy. However, as of the date of this hearing, the landlord had not yet been able to fully assess and receive estimates for repairs or other work to be done at the rental unit. The landlord did not submit a condition inspection report to show the condition of the unit at the end of tenancy nor did the landlord submit photographs of the unit at the end of the tenancy. Therefore, her application with respect to damage to the unit as a result of this tenancy is premature and is dismissed with leave to reapply.

The tenants contended that the landlord should be ordered to comply with the letter of the legislation (the Act) in attempting to access her rental unit. However, I find that their application relating to the landlord's access to the rental unit is moot in that they have vacated the rental unit. I refer the landlord to section 29 and section 70 of the Act with respect to the landlord's access to rental property.

The tenants also stated at this hearing that they wanted compensation for loss of quiet enjoyment of their rental unit as a result of the actions of the landlord. The tenants testified with respect to the landlord's failure to provide proper notice to enter or show the rental unit as well as other actions that they described as harassment. However, I find that the tenants did not formalize this portion of their claim in the application. Therefore, I will not make a decision with respect to a monetary order as a result of this hearing. I dismiss their request to amend their application to include an application for a monetary order with leave to reapply.

The landlord testified that he continues to hold a security deposit of \$1125.00 plus any interest from July 16, 2017 to the date of this decision for this tenancy. I will allow the landlord to retain the security deposit *plus any interest* in partial satisfaction of the monetary award. [There is no interest payable for this period.]

The landlord and tenant are not entitled to recover their filing fee in the circumstances: I find that each party should be responsible to pay their own filing fee for their application.

Conclusion

The tenants withdrew their application to cancel the landlord's Notices to End Tenancy and for repairs to the rental unit. I find that their application relating to the landlord's access to the rental unit is moot in the circumstances and therefore dismissed without leave to reapply. Their application for a monetary order against the landlord is dismissed with leave to reapply.

The landlord withdrew the portion of her application requesting an Order of Possession. Her application for damage to the rental unit is premature and therefore dismissed with leave to reapply.

The landlord is granted a monetary order in the amount of \$4500.00 for unpaid rent.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: June 22, 2018

Residential Tenancy Branch