



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERT, RR, OPR, MNR, FF

Introduction

In the first application the tenants seek to cancel a ten day Notice to End Tenancy for unpaid rent dated and received December 4, 2018. They also seek an order regarding emergency repairs and a rent reduction in light of the state of the rental unit.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and for a monetary order (amended) for unpaid November, December and January rent.

At the start of the hearing it was noted that the tenants' application to cancel the Notice has caused this matter to be given a priority hearing date. Rule 2.3 of the Rules of Procedure state that unrelated claims are not to be brought in the same application. I determined that the tenants' requests for a repair order and rent reduction are unrelated. I dismiss those claims and grant the tenants leave to re-apply.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Have the tenants wrongfully failed to pay rent?

Background and Evidence

The rental unit is a four bedroom "plus den" house. There is a written tenancy agreement. The tenancy started July 15, 2018 for a one year fixed term. The monthly

rent is \$2880.00, due on the 15th of each month. The landlord holds a \$1440.00 security deposit.

The ten day Notice alleges that the tenants failed to pay the rent of \$2880.00 on November 15, 2018.

The tenant Ms. C.L. testifies that the rent was not paid, nor has the December or January rent been paid. She describes ongoing maintenance and repair problems at the home and says that the effect of the problems leave the tenants living in a two bedroom two bathroom home instead of a four bedroom, four bathroom home.

She says the tenants have not contacted the Residential Tenancy Branch for direction in this matter.

It was not necessary to call on the landlord for a reply.

Analysis

Section 26 of the *Residential Tenancy Act* (the “*Act*”) is clear; a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Nothing in the *Act* permits a tenant with a grievance about a landlord’s failure to repair problems in the rental unit to withhold rent. Once a tenant has obtained a monetary award for damage or loss caused by the landlord’s failure, the tenant may deduct the award from rent, but not until then.

The tenants should have paid the rent but didn’t. As a result, the ten day Notice is a valid Notice and it has caused this tenancy to end on December 15, 2018. Pursuant to s. 55 of the *Act*, the landlord will have an order of possession.

The landlord is entitled to recover the unpaid rent of \$2880.00 for November as well as occupation rent of \$5760.00 for December and January.

I note that the landlord’s application also seeks recovery of alleged unpaid utilities but I declined to hear that matter at this hearing, through my error. I grant the landlord leave to re-apply in that regard. It should be noted that a landlord seeking recovery of utility costs from a tenant is expected to show a tenancy agreement requiring the payment by

the tenants as well as proof that the utility bills have been presented to the tenants for payment and they have not been paid within a reasonable time.

Conclusion

The landlord will have an order of possession.

The landlord will have a monetary award of \$8640.00 plus recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$1440.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants for the remainder of \$7300.00.

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 21, 2019

Residential Tenancy Branch