



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, PSF, OLC, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The landlord amended their application on September 2019, for subsequent rent not paid.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
2. For the landlord to provide services or facilities;
3. To have the landlord comply with the Act: and
4. To recover the cost of filing the application.

The tenants' amended their application on July 30, 2019 to add a monetary claim for money owed.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy and the landlord's request for an order of possession and a monetary order for unpaid rent. The balance of their claims is dismissed with leave to reapply.

Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on February 1, 2019. Rent in the amount of \$2,100.00 was payable on the first of each month. A security deposit of \$1,100.00 was paid by the tenant.

The parties agreed the tenants were served with a notice to end tenancy for non-payment of rent on July 22, 2019.

The landlord testified that the tenants did not pay all rent for May 2019, and the balanced owed for May 2019, was \$1,000.00. The landlord stated that no rent was paid for June, July, August, and September 2019 for a total rent owed of \$8,400.00.

The tenants acknowledged they did not pay \$900.00 for rent in May 2019, and they had an agreement with the male landlord that they security deposit could be applied to the rent owed.

The tenants testified that they had a verbal agreement that was made with the male landlord in May 2019, that they could make repairs to the rental unit instead of rent. The tenants stated they were informed later in May 2019, by the female landlord that the male landlord had passed away and that they would be contacted as soon as things were settled done.

The tenants' testified that when the female landlord attended on July 17, 2019, they were told not to do any further work. The tenants stated June and July 2019, was paid by the verbal agreement that had made with the deceased landlord back in May 2019, and they agreed with the female landlord that rent would commenced being paid on August 1, 2019.

The tenants' testified that they did not pay rent for August or September 2019, because they were told by the Residential Tenancy Branch not to pay any further rent because they had disputed the notice to end tenancy.

The female landlord testified that they were aware that there was some type and agreement with the deceased landlord to do some work; however, they did not know what it was. The landlord stated they asked for the tenants to provide an estimate for repairs; however, it was not agreed that it would be paid in the form of rent.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I am satisfied that all rent was not paid for in May 2019. This is supported by the evidence. I do not accept the tenants' version that they had permission from the deceased landlord that the security deposit would be used. This is no support by the text messaging between the parties as they show the tenants were going to send an etransfer.

While I accept there was some agreement formed between the tenants and the male landlord in May 2019 to do some work on the rental unit; however, the tenants were informed in later May that the male landlord was deceased.

In this case, I am not satisfied that the tenants had the any authorization by the landlords to withhold rent. The tenants' provided an estimate for work; however, that was only created when the female landlord requested an estimate. There is no written agreement from the deceased landlord authorizing work and there are not attached receipts.

Further, the male landlord was deceased in the middle of May 2019. I find any agreement the tenants may have had with the deceased landlord were no longer in valid. The tenants should have confirmed and made alternate arrangements with the female landlord as they knew nothing of the agreement. Furthermore, this simply could be one party taking advantage of another party due to the circumstances.

I also do not accept the tenants were told by the Residential Tenancy staff that they did not have to pay rent for August 2019, and September 2019. This is contrary to the Residential Tenancy Act. I find the tenants are taking advantage of the situation of the male landlord being deceased.

As the onus is on the tenants to prove they had authority under the Act to withhold rent, and without any letters from the deceased landlord, which no longer would be valid in any event or letters from the female landlord. I find the tenants have not met the burden of proof.

Therefore, I find the tenants' application to cancel the notice to end tenancy must be dismissed. I find the Notice issued on July 22, 2019, valid and remains in full force and effect.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

While I accept the male tenant may have done some work that was not completed, I find work agreements are not within my jurisdiction.

As the tenants did not pay all rent owed for May 2019 (\$1,000.00) and no subsequent rent for June, July, August, and September 2019, I find that the landlord has established a total monetary claim of \$8,500.00 comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$1,000.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of \$7,500.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants' application is dismissed.

The landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: September 24, 2019

Residential Tenancy Branch