



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, CNR, MNR, LRE, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with cross Applications for Dispute Resolution by the Landlord and Tenants. The Landlord’s Application requested an order of possession, a monetary order for unpaid rent and recovery of the filing fee. The Tenants’ Application requested that the 10 Day Notice to End Tenancy for unpaid rent be cancelled and that conditions be set on the Landlord’s right to enter the rental unit, and requested a monetary order for recovery of the filing fee.

The parties both testified that they had received a copy of the Notice of Hearing and Application made by the other party.

Both parties participated in the conference call hearing and were given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter(s)

The parties agreed that the rent as stated on the tenancy agreement signed by both parties is \$1,450.00, however, on September 01, 2011 the Landlord increased the rent to \$1,500.00 per month. I determined it appropriate to amend the Tenants’ Application to address the rent increase issue. The Landlord and Tenants have confirmed that a \$50.00 rent increase was imposed two months after the tenancy commenced, and that the rent increase did not follow the procedures required by the Act.

I find that the Tenants were overcharged rent by \$50.00 per month for September, October, and November 2011 for a total of \$150.00, due to an unlawful rent increase. I have adjusted the calculation of outstanding rent accordingly in this decision.

The Landlord agreed to the reduction in their monetary claim for unpaid rent from \$2,200.00 to \$1,950.00 accordingly. The Tenants agree that they owe \$1,950.00 in unpaid rent.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The parties agree that the tenancy commenced on June 29, 2011 and rent is due on the first day of the month in the amount of \$1,450.00 as stated on the tenancy agreement. The parties agree that the Tenants' paid a security deposit of \$725.00 to the Landlord when the tenancy commenced. Neither party provided a copy of the written tenancy agreement into evidence.

The parties agree that the Tenants were unable to pay the full rent for December 2011 and only paid \$800.00, and that the Tenants did not pay rent for January 2012. The parties agree that the Tenants owe the Landlord \$650.00 in rent for December and \$1,450.00 for January 2012.

The parties agree that the Landlord served the Tenants in person on January 05, 2012 with the 10 Day Notice to End Tenancy. A copy of the 10 Day Notice to End Tenancy was provided into evidence prior to the hearing.

The Tenants stated that they have been waiting for an EI payment which was not received in their bank account until January 20, 2012; as a result they were not able to pay the rent for December or January when it was due. The Tenants stated that on January 22, 2012 that they tried to contact the Landlord by phone to arrange to pay the rent, but that they could not reach the Landlord and the voicemail was full. The Tenants stated they are willing to pay the rent now. The Tenants stated that they do not want to move out at this time and have requested that the Notice to End Tenancy be cancelled.

The Landlord stated the Tenants have not contacted them to pay the rent after receiving the Notice to End Tenancy. The Landlord stated that they are not certain that they will receive the rent from the Tenants and they are requesting an order of possession and the unpaid rent. The Landlord wishes the Tenants to move as soon as possible.

The Landlord requests a monetary order comprised of \$650.00 in unpaid rent for December 2011, \$1450.00 unpaid rent for January 2012, less the \$150.00 overpayment (\$50 x 3 months September, October, November), for a total of \$1950.00.

Analysis

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

The parties agree that the Tenants received the 10 Day Notice to End Tenancy for Unpaid Rent by service in person at the rental unit on January 05, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally served on the Tenants at the rental unit on January 05, 2012, it was deemed to have been served by the same day. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent and apply for Dispute Resolution, or the tenancy would end from the service date. The Tenants did not pay the outstanding rent within five days from the date of service, but they did file for dispute resolution. The deadline to pay the rent and dispute the Notice was January 10, 2012. The Tenants testified that they did not have the money to pay the rent until January 20, 2012 and that they tried to contact the Landlord to offer to pay the rent, however, their calls were not returned. The Act does not require a Landlord to accept late rent and reinstate the tenancy once a Notice to End Tenancy has been issued and more than five days have passed. As correctly stated on the Notice, as the rent was not paid within five days, the Tenants were required to vacate the rental unit by January 15, 2012, the effective date of the Notice.

Section 26 of the Act requires a tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement requires that rent is due on the first of the month. I find that the Tenants failed to pay \$650.00 rent due December 01, 2011 and \$1,450.00 due January 01, 2012 and did not vacate the rental unit within 10 days of service of the Notice.

I am dismissing the Tenants' Application and I find that the Landlord is entitled to an order of possession.

As stated in the preliminary matters, the Landlord and Tenants have confirmed that a \$50.00 rent increase was imposed without following the procedures required by the Act; I find that the Tenants were overcharged rent by \$50.00 per month for September, October, and November for a total of \$150.00. Although the Tenants paid \$50.00 more in rent for a three month period, I find that it does not invalidate the Notice served on the Tenants by the Landlord, as the amount of rent arrears is greater than the \$150.00 overcharge. I have adjusted the calculation of outstanding rent accordingly in this decision and reduced the monetary order. The Landlord consented to the reduction of their monetary claim.

I find that the Tenants' owe \$650.00 for December 2011 rent and \$1,450.00 for January 2012 rent. The balance the Tenants owe to the Landlord is \$2,100.00, less \$150.00 which the Tenants overpaid for rent, as stated in the preliminary matters. As a result I find that the Tenants' owe the Landlord a total of \$1,950.00 in unpaid rent.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenants bringing the total amount owing to \$2,000.00.

I grant the Landlord an order under section 67 for **\$2,000.00**.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenants. This order must be served on the Tenants and may be filed in the Supreme Court.

I find that the Landlord is entitled to a monetary order for **\$2,000.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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 30, 2012.

Residential Tenancy Branch