



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, RP, RR, CNR, OPR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the tenants have put on their application. For claims to be combined on an application they must related.

Not all the claims on the tenant's application are sufficiently related to the main issue to be dealt with together.

I therefore on the tenant's application I will deal with the request to cancel a Notice to End Tenancy that's been given for nonpayment of rent, and a request for recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

On the landlords application I will deal with the request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for outstanding rent and the filing fee, and a request to retain the security deposit towards the claim.

Background and Evidence

Landlord testified that:

- This tenancy began on August 1, 2013 with the monthly rent of \$525.00 and security deposit of \$250.00 was collected.
- The tenants were subsequently given the \$25.00 month reduction in the rent as they were supplying wireless Internet to other tenants in the rental property.
- The rent was subsequently raised back up to \$525.00 per month as the other tenant in the rental property moved out and therefore these tenants were no longer supplying wireless Internet.
- In May 2014 the tenants deducted \$100.00 from the rent, and they have paid no rent for the months of June 2014 in July 2014.
- On June 1, 2014 a 10 day Notice to End Tenancy was posted on the tenant's door, however the tenants have failed to comply with that notice and have failed to pay the outstanding rent.
- He is therefore requesting an Order of Possession soon as possible and a Monetary Order as follows:

May 2014 rent outstanding	\$100.00
June 2014 rent outstanding	\$525.00
July 2014 rent outstanding	\$525.00
Filing fee	\$50.00
Total	\$1200.00

He also request an order allowing him to keep the full security deposit towards the claim and requested a Monetary Order be issued for the difference.

The tenant testified that:

- Rent is not \$525.00 per month as they have continued to supply Internet to the new tenant who moved in, and therefore rent remains at \$500.00 per month.
- She did withhold \$100.00 from the May 2014 rent, and has not paid any rent for the months of June 2014, and July 2014.
- She chose to withhold the rent in an attempt to pressure the landlord into dealing with a vermin problem, and the need for repairs. They have been living with mice since last year and now they have an ant infestation.
- Further the landlord has shut off the power from time to time and has been abusive and neglectful.
- The landlord is also holding her truck and items in the truck on another property and has not allowed her access.
- She has subsequently moved out of this rental property.

In response to the tenant's testimony the landlord testified that:

- The tenant has never informed him that she has moved out of the rental property, and has not returned any of the keys.
- He is willing to agree that rent is \$500.00 per month, as is not going to argue over \$25.00.

Analysis

It is my finding that the tenant did not have the right to withhold rent, and in doing so she has put her tenancy in jeopardy.

The only time that a tenant is allowed to withhold rent is when the tenant has had to pay for emergency repairs, and the landlord fails to reimburse the tenant for the cost of those repairs even after having received a copy of the invoice.

In this case the tenant has not paid for any emergency repairs, and just took it upon herself to withhold the rent as a pressure tactic to try and get the landlord to deal with some issues of concern.

Therefore since the tenants did not have the right to withhold the rent, the landlord did have the right to serve a Notice to End Tenancy for nonpayment of rent, and I will not set that notice aside.

This tenancy ends pursuant to that Notice to End Tenancy and I've issued an Order of Possession to the landlord.

I also allow the landlords reduced claim for outstanding rent totaling \$1100.00.

I also allow the landlords request for recovery of the \$50.00 filing fee.

Conclusion

Tenant's application

The tenant's application to cancel a 10 day Notice to End Tenancy is dismissed and I order that the tenants bear the \$50.00 cost of the filing fee the tenants paid.

As stated previously, the other unrelated claims in the tenant's application are dismissed with leave to reapply.

Landlord's application

Pursuant to sections 46 and 55 of the Residential Tenancy Act I have issued an Order of Possession to the landlord that is enforceable two days after service on the tenants.

Pursuant section 67 of the Residential Tenancy Act I have allowed the landlords reduced monetary claim of \$1150.00, and I therefore order that the landlord may retain the full security deposit of \$250.00 and I have issued a Monetary Order in the amount of \$900.00.

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: July 29, 2014

Residential Tenancy Branch

