



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES VANTAGE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants filed under the Residential Tenancy Act (the “Act”)

The landlords’ 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 tenants’ application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and
2. To recover the cost of filing the application.

Both parties appeared, gave 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.

Issues to be Decided

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

Are the landlords entitled to an order of possession for unpaid rent?

Are the landlords entitled to a monetary order?

Are the landlords entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on March 31, 2006, and on December 1, 2013, they parties entered into a new tenancy agreement. Rent in the amount of

\$950.00 was payable on the first of each month. The tenants paid a security deposit of \$475.00.

The parties agreed that the tenants received a 2 Month Notice to End Tenancy for Landlord's Use of Property, with an effective vacancy date of March 31, 2015. The tenant acknowledged they did not dispute the notice and accepted that the tenancy will legally end on March 31, 2015.

The parties agreed the tenants did not pay rent for February 2015, and were served with a 10 Day Notice to End Tenancy for Unpaid Rent, issued on February 4, 2015.

The tenants did not pay rent for March 2015. The landlord agreed that the tenants were not required to pay rent for March 2015, as that was compensation they were entitled to for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord testified that the tenant did not have any rights to withhold rent for February 2015. The landlord seeks to recover unpaid rent for February 2015, in the amount of \$950.00.

The tenant testified that they did not pay rent for February 2015, because the landlord did not make any repairs during their tenancy that they requested. The tenant stated that it was unfair that the landlords are now ending their tenancy to make repairs to the rental unit when those repairs could have been made during their tenancy. The tenant acknowledged that they did not have permission from an Arbitrator to deduct any portion of their rent.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

...

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application must be dismissed as the tenants admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act by not making necessary repairs prior to the tenancy ending.

However, the tenants did not have the authority under the Act to deduct any portion from the rent. At no time do the tenants have the right to simply withhold rent because they feel they are entitled to do so. I find the tenants breached the Act, when they failed to pay rent. I find the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on February 4, 2015, was a valid notice under the Act. Therefore, I find the landlords are entitled to recover unpaid rent for February 2015, in the amount of **\$950.00**.

Although the landlords are entitled to an order of possession based on unpaid rent for February 2015, the landlord was not seeking to end the tenancy earlier than March 31, 2015, as the matter has been complicated with the tenants' rights to compensation for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

As section 51(1.1) of the Act allows the tenant to withhold the last month of rent as compensation for receiving the two month notice and that amount is deemed to have been paid to the landlord, which would be occupancy rent in this case. I find the tenants have been compensated in accordance with the Act for receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property.

Therefore, I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **March 31, 2015 at 1:00pm**. A copy of this order must be served on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court

As the tenants were not successful with their application the tenants are is not entitled to recover the filing fee from the landlords.

I find that the landlords have established a total monetary claim of **\$1,000.00** comprised of unpaid rent for February 2015, and the **\$50.00** fee paid for their application.

I order that the landlords retain the security deposit of **\$475.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$525.00**.

Conclusion

The tenants' application is dismissed.

The landlords are granted an order of possession, a monetary order as stated above and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal 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: March 06, 2015

Residential Tenancy Branch

