



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF, MNR, OPR

Introduction

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

The landlord's application is a 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/utilities, and a request for recovery of his filing fee. The landlord is also requesting an Order allowing him to keep the full security deposit towards the claim.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for recovery of their filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not to cancel or uphold a Notice to End Tenancy and whether or not the landlord has established a monetary claim against the tenants, and if so in what amount.

Background and Evidence

The landlord testified that the tenants had fallen behind on the rent and therefore on November 3, 2015 he served the tenants with a 10 day Notice to End Tenancy for nonpayment of rent.

The landlord further testified that, although two payments were accepted for use and occupancy in the month of November, by the end of November 2015 the tenants still owed a total of \$2147.52 in outstanding rent, late fees, and interest.

The landlord further testified that, subsequently, the tenants failed to pay \$825.00 of the December 2015 rent, and failed to pay the full \$1650.00 January 2016 rent.

The landlord further testified that the tenants failed to pay their December 2015 utility bill and as a result he paid a total of \$209.97 towards the outstanding utilities as he had been notified that they were going to be added to his taxes.

The landlord is therefore asking for an Order of Possession for as soon as possible and a Monetary Order as follows:

Total outstanding at the end of November 2015	\$2147.52
December 2015 rent outstanding	\$825.00
January 2016 rent outstanding	\$1650.00
Utilities outstanding	\$209.87
Filing fee	\$100.00
Total	\$4932.39

The tenants testified that although they paid one half a month rent for September 2015, the rental property was not ready for them to occupy until September 27, 2015 and therefore they believe the landlord should be reimbursing them \$825.00.

The tenants also testified that the landlord had agreed to wait for the outstanding rent and allow them to make payments and therefore they believe this constitutes a loan and that the landlord should be bound by that loan.

The tenants also testified that they do not believe that the landlords rent ledger accurately reflects the amounts they have paid, although they do not have any evidence to show what payments they have made as a landlord did not issue rent receipts.

The tenants also testified that they did pay the December 2015 utility bill in the amount of \$199.88 on December 22, 2015 and therefore they should not have to pay it again to the landlord.

The tenants are therefore asking that the Notice to End Tenancy be canceled as they believe they only owe \$1422.52 and since the landlord agreed to loan them money they feel he should continue to accept payments towards that outstanding amount.

In response to the tenant's testimony the landlord testified that the tenants were given the keys to the rental unit on 15 September 2014 and started moving belongings in right away and therefore he believes that no refund is justified especially since no mention of her refund was ever brought up until the tenants fell behind on the rent.

Again in response to the tenants testimony the landlord also testified that his ledger accurately reflects all payments that have been made by the tenants and the only reason rent receipts were not issued is because the tenants always paid by bank transfer of some kind and therefore he believed rent receipts were not required. No rent was ever paid by cash.

The landlord further testified that he had attempted to work with the tenants to allow them to catch up on the outstanding rent, however it was not a loan, and the tenants did not make the agreed-upon payments and therefore he is now claiming the full amount outstanding.

Analysis

I reviewed the rent ledger supplied by the landlord and it is my finding that I accept the amounts on the ledger as recorded by the landlord, however there are certain parts that I will not allow.

I will not allow the landlords claim for late fees that are on the ledger because the landlord has provided no evidence to show that the tenancy agreement states that fees will be charged.

Section 7 of the Residential Tenancy Regulations (a copy is included below) allows the landlord to charge a late fee maximum \$25.00, however only if the tenancy agreement provides for that fee.

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) subject to subsection (2), a fee that does not exceed the greater of \$15 and 3% of the monthly rent for the tenant moving between rental units within the residential property, if the tenant requested the move;
- (f) a move-in or move-out fee charged by a strata corporation to the landlord;
- (g) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Further, I will not allow the landlords claim for interest on outstanding rent as there is nothing in the Residential Tenancy Act that allows the landlord to charge interest.

I also deny the landlord's \$209.87 claim for utilities as the landlord has provided no evidence of having paid those utilities. This portion of the claim therefore will be dismissed with leave to reapply. The landlord will be able to apply again for outstanding utilities if in fact the tenants have not paid them.

I deny the tenants request for an \$825.00 rent reduction for September 2014 as the tenants have provided no evidence to prove their allegation that the rental unit was not habitable.

I will only allow \$50.00 of the landlords claim for filing fees, because the total amount I have allowed is less than the \$5000.00 amount at which the fee doubles to \$100.00.

Therefore the total amount I have allowed is as follows:

Total rent outstanding to the end of November 2015 minus the late fees and interest	\$1875.00
December 2015 rent outstanding	\$825.00
January 2016 rent outstanding	\$1650.00
Filing fee	\$50.00
Total	\$4400.00

The tenants claim they have paid more than the landlord has recorded, however they have provided no evidence in support of that claim and therefore I will not deduct anything further from the amount above.

Conclusion

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have allowed \$4400.00 of the landlords claim and I therefore Order that the landlord may retain the full security deposit of \$800.00 and I have issued a Monetary Order in the amount of \$3600.00.

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 06, 2016

Residential Tenancy Branch

