



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDLAND MAINTENANCE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, RP

Introduction

This hearing convened as a result of cross applications. In the Tenants' Application for Dispute Resolution, filed on October 15, 2018, the Tenants requested an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 10, 2018, an Order that the Landlord make repairs, emergency and otherwise.

The hearing was conducted by teleconference at 9:30 a.m. on November 15, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to make repairs, emergency and otherwise, to the rental unit?

Background and Evidence

A copy of the written tenancy agreement was provided in evidence confirming that this tenancy began November 1, 2015. The agreement failed to indicate the amount of rent as well as when rent was due.

The Landlord testified that rent was to be paid in the amount of \$800.00 per month on the first of the month.

Receipts submitted in evidence also confirmed that these payments were made on the 1st of the month. The Landlord testified that the Tenants have their own receipt book and every time they paid the rent he would sign the receipt confirming payment.

The Landlord further stated that in the past (the fall of 2017 and the spring 2018) the Tenants were credited some expenses for their work done to the rental unit, and another property owned by the Landlord. The Landlord stated that these amounts were factored into the \$2,740.00 amount owing for the following:

Month	Amount owing
May 2017	\$400.00
July 2017	\$100.00
January 2018	\$255.00
March 2018	\$85.00
May 2018	\$100.00
September 2018	\$800.00
October 2018	\$200.00
November 2018	\$800.00
TOTAL	\$2,740.00

The Landlord testified that the Tenants paid \$512.58 for the October rent. The Tenants claimed to have paid \$87.42 at Canadian Tire for pest control items. He did not dispute

this amount but did not agree to them withholding \$200.00. He testified that the Tenant, E.D. informed him that she was going to keep \$200.00 every month.

The Landlord further testified that the Tenant failed to pay any rent for November 2018 and informed the Landlord that the payment was "at the lawyers".

In response to the Tenants withholding rent for October 2018, the Landlord issued the Notice; he confirmed that it was served by posting to the rental unit door on October 10, 2018 which was witnessed by L.P. (as noted on the filed Proof of Service).

The Tenant, T.E. testified as follows.

T.E. confirmed that rent is \$800.00 per month payable on the first of each month.

T.E. further confirmed that she withheld \$200.00 for the October rent and \$800.00 from the November rent. She confirmed she still has the \$800.00 for the November rent but refuses to pay the \$200.00 for the October rent.

She stated that she withheld \$200.00 from October rent as an "incentive to get things done around here". She confirmed she was aware she was not allowed to do that but for three years they have been asking the Landlord to make repairs and he was ignoring their requests.

T.E. stated that she disagreed with the Landlord's claim that \$1,940.00 was outstanding as of the date of the Notice. She stated that at that time only \$200.00 was outstanding for Octobers rent and \$800.00 for November.

Analysis

Based on the testimony and evidence before me, and on a balance of probabilities, I find as follows.

The parties agreed that the Tenants were obligated to pay \$800.00 per month on the first of each month.

The Tenants allege they were to be credited for work they performed at the rental unit and another property owned by the Landlord. The Landlord agreed such deductions occurred in the past, but testified the Tenants continued to owe the \$1,940.00 claimed on the Notice.

While the parties disagreed as to the amounts owing for months prior to October 2018, they agreed that the Tenants failed to pay \$200.00 for October 2018 and \$800.00 for November 2018.

The Tenant testified that they withheld \$200.00 from the October 2018 payment as an incentive to encourage the Landlord to complete repairs.

Pursuant to section 26 of the *Act*, a tenant must not withhold rent, even if the landlord is in breach of the tenancy agreement or the *Act*, unless the tenant has some authority under the *Act* to not pay rent. In this situation the Tenants had no authority under the *Act* to not pay rent.

For these reasons I find the Landlord has proven the Tenants failed to pay rent as alleged in the Notice; consequently, I dismiss the Tenants' request to cancel the Notice.

Section 55(1) of the *Act* provides as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to section 55 of the *Act* I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

The Landlord confirmed he had filed his own application for Dispute Resolution on November 1, 2018 for monetary compensation from the Tenants.

Conclusion

The Tenants withheld \$200.00 from the October 2018 rent without any legal authority to do so. As such, their application to cancel the Notice is dismissed.

As the tenancy is ending, I also dismiss the Tenants' claim for an Order that the Landlord make repairs, emergency and otherwise.

The Landlord is granted an Order of Possession.

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: November 15, 2018

Residential Tenancy Branch