



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, ERP, RP, OLC, PSF, LRE, MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenants KH and RW (collectively the "tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, the landlord confirmed that he had received the tenants' application and the tenants' confirmed they had received the landlord's evidence. As neither party raised any issues regarding service of the tenants' application or landlord's evidence, I find that the parties were duly served with these documents in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Service of Tenants' Evidence

Although the landlord confirmed personal receipt of the tenants' application for dispute resolution he claims the package did not contain any evidence. Tenant KH testified that he "handed everything" to the landlord in the one package and "did everything by the book."

I prefer the testimony of the landlord over tenant KH. The landlord was consistent in his testimony and did not waiver. He identified what he did receive, namely the application and fact sheet. Tenant KH was elusive and did not specify what was sent in the package. Only when asked did tenant KH indicate he had printed photographs and included them in the package. The landlord's testimony has persuaded me on the balance of probabilities that the tenant did not provide evidence in the application package. For this reason, I have not relied on the tenants' documentary evidence to form part of my decision.

Preliminary Issue – Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 10 Day Notice and whether emergency repairs were needed. Accordingly I find the remaining portion of the tenants' application must be severed.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order to the landlord to make emergency repairs to the rental unit?

Are the tenants authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2017 on a fixed term until March 31, 2018 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,400.00 is payable on the first of each month. The tenants remitted a security deposit in the amount of \$700.00 at the start of the tenancy, which the landlord still retains in trust.

The tenants confirmed receipt of the 10 Day Notice, dated October 4, 2018, left in the unit mailbox. This 10 Day Notice indicates rent in the amount of \$1,460.00 due October 4, 2018 remains outstanding and states an effective move-out date of October 15, 2018.

The landlord testified that the tenants did not pay October rent and that the rent due date on the 10 Day Notice was a clerical error. He testified that the \$60.00 above the \$1,400.00 rent due was in relation to a separate debt the tenant had with the landlord.

The tenants testified that they had authorization from the landlord to withhold rent pending an assessment of mold in the unit. The tenants testified that the landlord granted them until October 4, 2018 to determine what repairs were needed and what if any costs would be deducted from October rent. The tenants testified that after notifying the landlord of the professional opinion of a mold expert; the landlord issued the 10 Day Notice on October 4, 2018.

In reply, the landlord denied that he had authorized the tenants to withhold October rent pending a mold assessment.

In regards to the emergency repairs, the tenants explained that due to an earlier septic flood in the bathroom, the entire bathroom sustained substantial damage and now required demolition and restoration. Additionally, the tenants seek to have two bedrooms remedied of mold.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The tenants filed their application within five days but at no time did the tenants argue that October 2018 rent had been paid in full; instead they testified that they withheld rent on the basis that they had permission from the landlord. In the absence of confirmation from the landlord I find that the tenants have failed to establish they were permitted to withhold October 2018 rent. The landlord's affirmed testimony has satisfied me on a balance of probabilities, that the October 4, 2018 rent due date on the 10 Day Notice was a clerical error, and not an indication that the tenants were permitted to withhold rent. Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, whether or not the landlord complies with the *Act*, *Regulations* or tenancy agreement. Under the *Act*, the tenants were obligated to pay rent on October 1, 2018 and failed to do so.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find that the tenants were served with an effective notice. Accordingly I dismiss the tenants' application to cancel the 10 Day Notice and find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*.

Since the tenancy is set to end, I dismiss the tenants' application for an order to the landlord to make emergency repairs without leave to reapply.

As the tenants were not successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenants.**

I dismiss the tenants' application for an order to the landlord to make emergency repairs without leave to reapply.

The remainder of the tenants' application has been severed and therefore dismissed with leave to reapply.

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 08, 2018

Residential Tenancy Branch