



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development



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Decision

Dispute Codes:

CNR

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated March 3, 2009 and effective March 13, 2009.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
 - Did the tenant fail to pay rent when rent was due?
 - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy? OR
 - Did the tenant have a right under the Act to deduct the amount in question from rent normally owed?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice. The burden of proof is on the applicant to prove the remainder of the issues.

Background and Evidence – Request to Cancel Ten-Day Notice

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated March 3, 2009 and effective March 13, 2009. The landlord testified that a third party had posted the Notice and placed it in the tenant's mail slot on March 4, 2009. As this Notice was posted, the deemed date of service would be March 7, 2009.

Also submitted into evidence was a copy of the tenancy agreement, a statement signed by the tenant explaining the circumstances, a written assessment of the furnace problem from the owner/manager of the Mechanical Contracting Company that did the repairs, a witness statement from the individual responsible for checking on the house during the tenant's absence, a written statement from a witness testifying as to the emergency nature of the situation, a copy of an invoice from the mechanical contractor dated January 31, 2009 that was addressed to the tenant's employer and a receipt for payment of \$979.63 by the tenant's employer to the mechanical contractor dated March 9, 2009.

The landlord testified that the Notice to End Tenancy was issued because the tenant had only paid a portion of the \$1,600.00 monthly rent for the month of March 2009 and had deducted funds for a furnace repair that was done in January 2009. The landlord stated that the tenant had taken action without first obtaining the landlord's approval. The landlord testified that, on March 1, 2009, the landlord had not yet been provided with an invoice from the repair company despite repeated requests. The landlord did not disagree that the furnace had broken down in January and had required immediate repair. However the landlord took exception to the tenant's actions and disputed whether or not the tenant had followed the Act by making two attempts to notify the

emergency maintenance contact at the time the furnace was found not working before arranging the repair work. The landlord's position was that, even if the tenant had tried and failed to reach the maintenance contact person, as claimed, the tenant should then have called the owner/landlord to inform them about the situation. The landlord pointed out that the tenancy agreement shows the name and number of the landlord/owner and there is no reason why a call was not made. The landlord testified that, had the tenant made them aware of the furnace malfunction, arrangements could have been made to have the matter dealt with in a more economical way. The landlord testified that there was an inordinate delay between the time when the repair work was completed and the time that the landlord was finally apprised of the substantial cost involved. The landlord testified that this information was not revealed until after the tenant's rent for March was already past due, and after the Ten-Day Notice was issued. The landlord testified that throughout the tenancy, the tenant has been persistently late with the rent which is due on the first day of the month and has frequently placed the blame on his employer, who evidently furnishes the rental funds to pay for the unit. The rent shortfall for March prompted the landlord to issue the Ten-Day Notice to End the Tenancy.

The tenant testified that in January when he returned home after the holidays, he found the furnace had quit and that the water had frozen solid. The tenant testified that he made two phone calls to the emergency contact person identified by the landlord but was unable to reach this individual after which he contacted a mechanical contractor who specialized in heating repairs. The tenant stated that the emergency repairs were done right away and the tenant let the landlord know that this work had been done. The tenant testified that the bill for the repair work was sent by the contractor directly to the tenant's employer and the employer then paid the invoice in March, deducting the costs of \$979.63 from rent owed for the month of March 2009. The tenant's position is that he fully complied with the Act and had a valid right to deduct the cost of emergency repairs from rent owed. The tenant testified that the landlord's Notice to End Tenancy for Unpaid Rent should therefore be cancelled.

Analysis

Under section 26 of the Act, (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. In this tenancy and compliant with the Act, the rent is due and payable on the first day of each month.

Under section 46 of the Act, a landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities when rent or utilities are in arrears.

On the question of whether or not this tenant had a right to deduct a portion of the rent, section 33 of the Act deals with situations where emergency repairs are required and describes these as repairs that are, urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, including the primary heating system.

However, a tenant may have emergency repairs made but only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

In this instance I find that the emergency repairs were needed, and that the tenant made attempts to reach the maintenance person identified by the landlord as the emergency contact. In regards to the landlord's position that there was an expectation that the tenant should still have contacted the owner/landlord prior to arranging for repairs, I find that, while this may be a logical presumption, it is not specifically required under the Act and the tenancy agreement is silent in regards to this requirement.

Section 33(5) states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and gives the landlord a written account accompanied by a receipt for each amount claimed. Once all of the above conditions are met and if the landlord does not reimburse a tenant as required, it is only then that the tenant may deduct the amount spent on emergency repairs from rent.

In this instance, I find some merit in the landlord's claim that the tenant had technically deducted the cost of the repairs prior to furnishing the landlord with a written account of the costs and actual copies of the receipts.

However, I find that the landlord received the required data shortly after serving the Ten-Day Notice and that the data received by the landlord functioned to explain and justify the shortfall in the amount of rent paid for March 2009. I find that the tenant made application to dispute the Notice within five days of the deemed service date of March 7, 2009 and that the tenant has established that all the criteria entitling the tenant to reduce the rent by the costs of emergency repairs has been successfully met.

In regards to the matter of repeated late payment of rent by the tenant, I find that this complaint is not relevant to the issues before me in this dispute. However, on consent of the parties, I find that the landlord's address shown on the tenant's application for dispute resolution to be the correct address and I further find that the parties are aware that, in order to comply with the Act, the tenant has an obligation to ensure that rent is paid on or before the first day of the month as repeated late payment of rent would support ending the tenancy for cause under section 47 of the Act.

Conclusion

Based on the testimony and evidence discussed above, I hereby order that the Ten-Day Notice to End Tenancy dated March 3, 2009 is permanently cancelled and of no force nor effect.

May 2009

Dispute Resolution Officer