



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNR, ERP, RP, RPP, LRE

Introduction

This hearing dealt with the tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent*, compensation for cost of emergency repairs; orders for the landlord to make repairs and emergency repairs, return the tenant's personal property and set conditions on the landlord's right to enter the rental unit. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to the other party's submissions.

Issues(s) to be Decided

1. Are there grounds to set aside the Notice to End Tenancy for unpaid rent?
2. Is the tenant entitled to compensation for the cost of emergency repairs?
3. Orders for repairs.
4. Other orders as determined necessary.
5. Has the tenant established the landlord is in possession of the tenant's personal property?

Background and Evidence

Upon consideration of all the evidence before me, I make the following findings. The tenant is required to pay rent of \$754.00 on the 1st day of the month. On July 13, 2009 the tenant's July rent cheque was returned to the landlord with a Returned Item Advice informing the landlord there were insufficient funds to cash the cheque. The landlord contacted the tenant about the returned cheque. The tenant took the position that it was the bank's fault for the cheque being returned. Later in July, the landlord attended the bank in an attempt to see if the funds were available but was advised they were not by the bank. In early August 2009 the landlord went to collect rent for July and August 2009 from the tenant but was only provided a cheque for \$754.00. The cheque written in August cleared the tenant's bank account on August 5, 2009. The landlord went to the tenant's bank again to cash the July rent cheque but was told there were insufficient funds. The landlord posted a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice) on the tenant's door on August 12, 2009. The Notice indicates that rent of \$754.00 was outstanding as of August 1, 2009 and has an effective date of August 26, 2009. On September 9, 2009 the landlord was contacted by the tenant's caregiver who

advised the landlord the funds were available to cash the cheque received in July 2009. The landlord cashed the cheque on September 10, 2009.

The landlord testified that she advised the tenant in early August 2009 that the cheque written in August would be applied to the outstanding rent for July 2009 and that rent was still owed for August 2009. The tenant denied that the landlord had made such a statement to her.

The tenant testified that the funds were available when the landlord tried to cash the July 2009 rent cheque but that the bank was doing an investigation into an alleged fraudulent cheque cashed by the landlord in April 2009. Upon enquiry, the tenant could not say what the outcome of the investigation was. The tenant's documentary evidence included copies of her bank statements. The bank statements show the tenant was in an overdraft balance of \$778.17 as of July 3, 2009 and the rent cheque was returned NSF on July 7, 2009. Upon enquiry, the tenant stated her overdraft limit is \$1,500.00.

The landlord felt the tenancy needed to end and the tenant vacate the rental unit and was willing to permit the tenant occupancy until November 30, 2009.

With respect to the tenant's claim for compensation for emergency repairs, the parties agreed that the tenant's toilet was plugged, the landlord paid a plumber to plunge the toilet, which cost the landlord \$42.80 and that the landlord cleared the tenant's bathtub of empty bottles collected by the tenant. The landlord stated the bottles were returned and the landlord collected \$32.00.

The tenant requested repairs to her kitchen sink, lights and wall sockets, and water coming under the door when it rains. The landlord provided evidence that she had attended the tenant's unit in May 2009 to respond to the tenant's request for a repair to the sink. The landlord submitted that the tenant's unit was so excessively cluttered with the tenant's personal property, she could not even enter the kitchen or get close to the sink in order to inspect it. The landlord provided a photograph of the kitchen and other areas of the rental unit that depict an extremely cluttered unit. The landlord also submitted that she was unaware of problems with lights or sockets not working with the exception of a light in the laundry room. The landlord testified she had heard the tenant complain of water coming under the door previously and had asked the tenant to call her when this happens so that she could determine where the water was originating but that the tenant did not call her. The landlord also submitted that she wanted to dry out the carpets but they were covered with the tenant's personal property, including other carpets laid on top of the carpets, and that the tenant told the landlord it was no longer necessary.

The tenant alleged the landlord took the tenant's jewellery and leather coats. The landlord denied such allegations. The tenant alleged the landlord had the tenant's truck towed off the property approximately three years ago. The landlord testified the truck was violating municipal by-laws and after trying to negotiate with the tenant for quite some time, the tenant agreed to sell the truck for \$100.00 to people known to the landlord for parts; however, it turned out the truck had no useable parts and was taken to the dump by the subsequent owners.

Finally, the tenant testified that the landlord had entered the rental unit approximately three years ago and the tenant is now seeking to have conditions set upon the landlord's right to enter the premises. The landlord explained that the tenant requested the landlord tend to the tenant's pets when the tenant was in the hospital and the tenant gave the landlord a key. The landlord also provided evidence that recent entry in to the rental unit to repair the kitchen sink and conduct an inspection were done after posting a 24 hour written notice to enter.

Analysis

The tenant is responsible for ensuring rent is paid in full and when rent is due under the tenancy agreement. Although the tenant insisted that the rent cheque for July 2009 was not returned for insufficient funds, I find the preponderance of evidence supports the contrary. The Returned Item Advice provided to the landlord by the bank cited insufficient funds as the reason for returning the cheque. The tenant's bank statement also shows the cheque as being returned as "NSF" and an NSF fee being charged to the tenant. Finally, the tenant's own testimony that her overdraft balance was \$1,500.00 supports the reason the tenant's bank did not honour the cheque since the tenant was already \$778.17 in overdraft when the landlord tried to cash the \$754.00 cheque. Even if the cheque was not honoured by the tenant's bank for a reason other than insufficient funds, any issues between the tenant and her bank do not concern the landlord.

With respect to the tenant's allegations that the landlord had fraudulently cashed a cheque in April, the tenant did not provide a copy of the cheque as evidence for the hearing. The landlord submitted that she had previously requested a copy of the cheque but the tenant never provided it to her. Therefore, I find insufficient evidence that the landlord collected rent the landlord was not entitled to collect.

The landlord posted the Notice to End Tenancy after the tenant had paid the landlord \$754.00 in early August 2009. I find the landlord had a valid reason for issuing a Notice since the landlord was still owed one month's rent whether it be identified as July's rent

or August's rent. Since the Notice was posted on August 12, 2009 the Notice was deemed served on August 15, 2009 and the tenant had until August 20, 2009 to pay the outstanding rent to nullify the Notice; however, the tenant did not ensure sufficient funds were available to the landlord until September 9, 2009. Paying outstanding rent on September 9, 2009 upon receipt of a 10 Day Notice posted on August 12, 2009 is well beyond the time permitted to a tenant. Rent paid after the five day time limit does not automatically reinstate the tenancy unless the parties consent to such reinstatement or otherwise waive their right to end the tenancy.

Without express waiver of the Notice, I have considered whether the parties acted in such a way as to indicate the tenancy was reinstated. I heard that the tenant had provided rent cheques to the landlord for September and October 2009 by having a third party deliver the cheques to the landlord as opposed to the normal manner of the landlord attending the property to collect a cheque from the tenant. There was no communication between the parties concerning the status of the tenancy upon payment of rent for September and October. The landlord explained that she took rent for September and October 2009 as the tenant had disputed the Notice and the matter was set for hearing on today's date so the landlord did not anticipate the tenant vacating prior to October. I find the landlord's explanation to be a reasonable one and I do not find sufficient evidence that the landlord acted in such a way as to convey to the tenant that the tenancy would be reinstated or that the landlord waived her right to enforce an end the tenancy.

In light of the above findings, I find the tenancy legally ended on the effective date of the Notice on August 26, 2009 since the tenant continues has not demonstrated that she paid the outstanding rent by August 20, 2009. As the tenant continues to reside in the rental unit, the landlord is entitled to regain possession of the rental unit. As the landlord consented to permit the tenant to occupy the rental unit until November 30, 2009 I provide an Order of Possession to the landlord effective November 30, 2009. The landlord must serve the Order of Possession upon the tenant.

The tenant has requested compensation for emergency repairs. Emergency repairs paid by a tenant are recoverable if the landlord does not respond to the tenant's two attempts to contact the landlord for assistance within a reasonable amount of time and the tenant incurs costs to repair the emergency. In this case, the documentary evidence shows that the landlord responded to the tenant's complaint concerning her plugged toilet by having a plumber plunge the tenant's toilet and that the landlord paid the plumber for the repair. Therefore, the landlord paid for the emergency repair. However, I heard the landlord removed empty bottles from the tenant's bathtub and retained the \$32.00 received from the recycling depot in partial satisfaction of the repair bill. I find it was not within the landlord's right to do take the tenant's possessions

without the tenant's consent. Rather, the remedy available to the landlord would have been to request payment from the tenant for the repair bill or make an Application for Dispute Resolution to settle the matter. Therefore, I award the tenant \$32.00. The landlord is at liberty to make an Application for Dispute Resolution to seek compensation for the plugged toilet from the tenant if the landlord wishes to pursue the matter.

With respect to the tenant's request for repairs and in recognition of the excessive amount of clutter in the rental unit, I ORDER the tenant to clear a pathway to and around the areas that the tenant requires repairs. This means the tenant must clear a pathway through the kitchen to the sink, clear the kitchen sink of dishes and other debris and clear the area beneath the kitchen sink. This also means that furniture and belongings need to be cleared away from the electrical sockets the tenant wishes repaired and a clear pathway underneath the light fixtures requiring repair. I further ORDER that once the tenant has cleared these areas, the tenant must inform the landlord so that the landlord can inspect and repair the items as required. I ORDER the landlord to attend to the property promptly after being informed that the areas have been cleared of the tenant's possession.

I find I have insufficient evidence to find the landlord is in possession of the tenant's personal property and I make no order for its return.

A landlord is permitted to enter a rental unit in accordance with the requirements of section 29 of the Act. Section 29 of the Act provides that a landlord may enter a unit with the tenant's consent or with written notice provided at least 24 hours in advance. I find no evidence of illegal entry in to the rental unit by the landlord and I do not find it necessary to set conditions upon the landlord's right to enter the rental unit. The landlord is permitted to enter the rental unit in order to conduct repairs or inspections as set out in section 29 of the Act.

As the tenant is permitted to occupy the rental unit until November 30, 2009 if the tenant intends to occupy the unit in November 2009 the tenant is ORDERED to pay the landlord \$754.00 for use and occupancy of the rental unit. The tenant is permitted to deduct \$32.00 in satisfaction of the award granted to the tenant for the landlord removing the tenant's empty bottles and retaining the bottle deposits.



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Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective November 30, 2009.

The tenant is awarded \$32.00 with respect to her monetary claim and is permitted to deduct that amount from the amount payable to the landlord for use and occupancy of the rental unit for November 2009.

The tenant is ORDERED to clear pathways to and around areas that the tenant seeks repairs and inform the landlord when pathways have been cleared. The landlord is ORDERED to promptly respond to the request for repairs once the tenant has notified the landlord that the areas have been cleared. No other orders have been issued with this decision.

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: October 07, 2009.

Dispute Resolution Officer