



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNR, MNDC, RR, FF

Introduction

This hearing dealt with cross applications. The tenant applied to dispute a Notice to End Tenancy for Unpaid Rent; to request monetary compensation for the cost of emergency repairs, damage or loss under the Act, regulations or tenancy agreement; and authorization to reduce rent for repairs, services or facilities agreed upon but not provided. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent. Both parties were provided the opportunity to be heard and to respond to the other party's submissions.

Two agents for the owner of the property appeared at the hearing, one being called as a witness for the tenant. I heard from both agents and have distinguished them as GH and TB.

Issues(s) to be Decided

1. Has the tenant established a basis to cancel the Notice to End Tenancy for Unpaid Rent?
2. The amount of rent owing.
3. Is the tenant entitled to compensation for emergency repairs and damage or loss and if so, the amount?
4. Is the tenant authorized to reduce rent?
5. Award of the filing fee.

Background and Evidence

I heard undisputed testimony that the tenant is required to pay rent of \$925.00 per month. In April 2009 the tenant and GH participated in a dispute resolution proceeding whereby the landlord agreed to look into repair issues and withdrew a Notice to End Tenancy for Cause. On December 6, 2009 GH issued a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice). The Notice indicates rent of \$1,850.00 was outstanding as of December 1, 2009. The tenant disputed the Notice within five days of receiving the Notice.

The landlord GH testified that the tenant did not pay rent for the months of November and December 2009. GH testified that the owner of the property had informed GH that the tenant had given \$975.00 and \$250.00 to the maintenance man on January 14, 2010. The landlord GH stated he was still pursuing an Order of Possession at the instruction of the owner and a Monetary Order for the balance of rent owing.

The tenant testified that she approached by the “new landlord” identified in this decision as TB who instructed the tenant to pay him the outstanding rent instead of GH and made an agreement with the tenant to accept \$1,050.00 of the outstanding rent on January 14, 2010 and the balance by the end of January 2010. TB was called as a witness during the hearing and TB confirmed that he was working for the owner of the property to deal with outstanding issues at the property including the tenancy with the tenant.

The tenant disputed that she owed rent for November 2009 and claims that it was paid by social services. GH stated that it had not been paid and that his enquiry with social services confirmed they did not pay rent for November 2009. The tenant testified that she had not been able to obtain proof of payment of rent for November 2009 from social services as they will not return her calls. The tenant acknowledged that she did not pay rent for December 2009 because she had to spend money to replace possessions damaged by smoke from a fire in an adjacent unit.

The parties provided consistent testimony that there had been a fire in an adjacent unit in October 2009 and that smoke had infiltrated the tenant's unit. The tenant provided evidence that she had to replace bedding and provided a receipt to show replacement of three mattresses and box springs on November 9, 2009. The tenant's evidence also included a cheque stub for payment towards "crisis furniture" by social services on November 23, 2009. The tenant provided a copy of the social assistance statement she received in November for the benefit month of December 2009. The statement shows that her shelter portion of assistance was paid to the tenant. Upon enquiry, the tenant confirmed she did not pay rent for the month of December 2009. The tenant also stated that since 2008 her rent was paid directly by social services but that she requested social services stop paying the landlord directly.

The tenant testified that she had repair "orders" as a result of the April 2009 dispute resolution proceeding and that the landlord had not made any repairs since that time. The tenant pointed to the move-in inspection report that identified repairs that were supposed to be made at the beginning of the tenancy. In addition, the tenant claimed she needed a deadbolt on her door, repairs to her sliding patio door, repair of mould and pest removal. The tenant confirmed that TB has recently installed a deadbolt on the door and installed a lock on the sliding patio door but that a handle still needs to be installed. Since the fire in the adjacent unit, the tenant has been waiting for the carpets to be cleaned. In making this application, the tenant is seeking \$3,440.00 as compensation. In her application she indicates this amount is comprised of \$2,120.00 for the months of May 2009 through December 2009 and \$1,320.00 for "remainder of November and December rent" due to bedding and clothes that had to be replaced after the fire.

The landlord GH responded to the tenant's request for repairs and compensation as follows. The patio door was broken by the tenant, mice are attracted to breadcrumbs on the patio, mould is the result of clutter and lack of ventilation in the unit and that the tenant has refused offers to have the carpets cleaned after the fire. The landlord GH

also testified that tenants are required to carry contents insurance as a term of the tenancy agreement and that the fire department had already informed the tenant that the landlord is responsible for repairing damage to the building but that tenant's possessions are the responsibility of the tenant.

The tenant claimed that she was unable to obtain content insurance because of a lack of a lock on the rental unit door.

The landlord TB confirmed there is one area of water damage to the wall of the rental unit and that TB would provide a key to the new deadbolt to GH in order for GH to make repairs.

With respect to keys for the rental, I heard disputed testimony that the tenant has lost keys in the past or that keys were given to other individuals.

Analysis

This was a very unusual proceeding since the two agents for the landlord have been communicating separately with the tenant and even conveyed different observations and intentions to me during the hearing. Understandably, this places tenants in a state of confusion. It is suggested that the landlord's agents work more closely together to determine the best course of action to address the issues with this tenancy.

Upon hearing from all parties, I considered whether the 10 Day Notice was waived or withdrawn. A Notice may be withdrawn with the consent of both parties. A question of waiver becomes an issue where a landlord accepts rent after the effective date on a Notice. In this case, an agent for the landlord accepted rent after the effective date of the Notice and indicated to the tenant that the tenancy would continue. Therefore, I find sufficient evidence that the landlord and tenant agreed that the tenancy would be reinstated and I find the Notice issued December 6, 2009 was withdrawn.

With respect to unpaid rent, a tenant has the onus to show rent was paid as the landlord cannot be expected to prove something he has not received. At issue is whether rent was paid for November 2009. The tenant did not provide documentary evidence that November 2009 was paid to the landlord yet the tenant was able to provide copies of her December 2009 benefit statement and subsequent crisis funding. Further, the tenant's request for monetary compensation indicates she is seeking compensation equivalent to the "remainder of November and December rent" which indicates to me acknowledgement that at least a portion of November's rent was not paid to the landlord. Although the tenant may have tried contacting social services to request confirmation that November rent was paid, I was not provided dates that the tenant requested documentation from social services and since the tenant has been aware that there is an issue with receipt of November's rent since being served the Notice on December 6, 2009 I find the tenant has had ample time to gather evidence. Therefore, I find the tenant has not sufficiently established that she paid rent for November 2009 and I award the landlord a Monetary Order for unpaid rent of \$800.00 for the months of November and December 2009 ($\$925.00 + 925.00 - 1,050.00$).

With respect to repairing and maintaining a rental unit, the Act provides the following:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

With respect to outstanding repair issues, I make the following ORDERS to the landlord:

1. Inspect the rental unit within seven days of receiving this decision and determine necessary repairs required in the rental unit to comply with the Act.
2. Ensure all repairs identified during the inspection are repaired within 30 days of receiving this decision.
3. Ensure all of the repairs identified on page 3 of the move-in inspection report are completed within 30 days of receiving this decision.
4. Arrange for the carpets to be cleaned within 30 days of receiving this decision.
5. The landlord must provide proper written notification to the tenant of the dates and times the landlord and repairmen or carpet cleaners will be entering the rental unit to fulfill these orders.

The tenant is also ORDERED to maintain the rental unit in a reasonable state of cleanliness and ensure all damages caused by the tenant or persons permitted on the property by the tenant are repaired in a timely manner.

The landlord is hereby AUTHORIZED to require the tenant to pay a key deposit of not more than \$25.00 for any additional keys provided to the tenant.

Where a party makes a claim for monetary compensation against another party, the party making the application has the burden to prove the claim. The burden of proof is based on the balance of probabilities. Sections 7 and 67 of the Act provide for awards for compensation and in accordance with those sections, in order for a party to succeed in a monetary award against another party, I must be satisfied of the following:

1. The other party violated the Act, regulations or tenancy agreement;
2. The violation caused the applicant to incur damages or loss;
3. Verification of the amount of the damage or loss; and,
4. The applicant did whatever was reasonable to mitigate their damage or loss.

With respect to the tenant's request for compensation, I find sufficient evidence that the landlord violated the Act by not repairing the deficiencies identified on the move-in inspection report. I find sufficient evidence that the landlord GH was aware of these repairs and agreed to address them during the dispute resolution hearing held in April 2009 but did not take reasonable action to address the repair issues. Therefore, I find the tenant has established that her tenancy was devalued and I award the tenant \$100.00 per month for the months of May to December 2009 which is \$800.00.

Without evidence that the tenant had made other repair requests in writing, I do not find sufficient evidence that the tenant sufficiently mitigated any losses with respect to other repair issues and I do not award compensation to the tenant for any other repair issues. However, if the landlord fails to fulfill the Orders as set out in this decision, the tenant may make a subsequent application for monetary compensation. The tenant would be expected to sufficiently identify repairs that affect her use and enjoyment of the rental unit in making any subsequent application.

In order for the tenant to succeed in establishing a claim for monetary compensation for damage to the tenant's possession as a result of a fire in an adjacent unit, the tenant would have to show that the damage was caused by a violation of the landlord. I heard

that a fire was caused by another occupant using an inappropriate extension cord. I fail to find the landlord caused the fire. The tenant alleged she could not get content insurance because of the landlord's failure to provide a lock on her door. However, I find insufficient evidence that the landlord was aware of this deficiency or that the tenant had been rejected for insurance for this reason. I was also provided evidence that social assistance compensated the tenant for the items for which she had a receipt. Therefore, I dismiss the tenant's request for compensation for smoke damage to her personal possessions without leave to reapply.

As I have found the landlord entitled to unpaid rent of \$800.00 and the tenant entitled to compensation of \$800.00, in accordance with section 72 of the Act I offset these two amounts and I do not provide a Monetary Order for either party.

Both parties are responsible for covering the cost of making their respective applications.

Conclusion

The tenancy has been reinstated with the effect that the Notice issued December 6, 2009 is no longer effective.

The landlord has been ordered to inspect and repair the rental unit in a manner that complies with section 32 of the Act. The tenant has been ordered to maintain the rental unit in a manner that complies with the Act.

The landlord established an entitlement to unpaid rent of \$800.00 and the tenant established an entitlement to compensation of \$800.00. These two amounts have been offset and I do not provide a Monetary Order to either party.

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 21, 2010.

Dispute Resolution Officer