



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, OLC, RP, RR

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, for a monetary order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the *Act*, An Order for the landlord to make repairs to the unit, site or property, and an Order for the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents was done in accordance with s. 89 of the *Act*. They were sent to the landlord by registered mail on September 23, 2010. The tenant amended his application and this was served to the landlord with the tenants' evidence on October 10, 2010. The landlord confirmed receipt of the tenants' applications and evidence.

The landlord states that he served the tenant with his evidence by asking a neighbor to give this to him in person. The tenant states he did not receive the landlords' evidence and the landlord was unable to call the person who served the tenant with the evidence to give affirmed testimony that the evidence was served to the tenant as declared by the landlord. Consequently the landlords' documentary evidence has not been considered pursuant to s. 11.5 (b) of the Rules of Procedure. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notices to End Tenancy?

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- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the Act, Regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?
- Is the tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

Both parties agree that this tenancy started on May 01, 2010. This is a fixed term tenancy for one year. Rent for this unit is \$1,395.00 per month plus \$15.00 per month for water. Rent is due on the first of each month. The tenant paid a security deposit of \$697.50 and a pet damage deposit of \$697.50 on May 01, 2010.

The landlord testifies that he served the tenant with a 10 Day Notice to End Tenancy on September 29, 2010 due to \$725.00 in outstanding rent that was due on September 01, 2010. The landlord states the tenant paid \$675.00 by cheque and gave the landlord a list of bills for work the tenant had completed to the amount of \$725.00. The landlord claims he did not authorise the tenant to carry out any work and the tenant did not contact him about any emergency repairs that he felt were required.

The landlord testifies that he served the tenant with another 10 Day Notice to End Tenancy on October 02, 2010 due to \$1,395.00 in outstanding rent due on October 01, 2010. He states the tenant withheld his rent for more repairs he claims to have completed but the landlord states the tenant did not contact him again and he did not authorise this work and did not receive any invoices from the tenant.

The landlord seeks an Order of Possession based on the 10 Day Notices to End Tenancy as the tenant has not paid the outstanding rent of \$2,120.00.

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The tenant states he filed an amended application to dispute the 10 Day Notice on the fifth day after he received the Notice. The tenant states he withheld the rent as the landlord had not done the required emergency repairs. The tenant claims when he moved into the property there were a number of repairs that required attention and he states the landlord told him he would get round to it in August. After moving in the tenant claims his daughters foot went through the rotting porch and she required five stitches in her ankle. He states the landlord then told him to do the work and give him the receipts. The tenant claims he did this for the first two months and the landlord then said it was getting to expensive so the tenant paid him the full rent for July, 2010.

The tenant claims he contacted the landlord about the emergency repairs. He claims he had to replace the front door as it would not lock, there had been a flood in the basement and he paid \$400.00 to a company to hang the front door, pump water from the basement, fix the sump pump and dig a trench to prevent future flooding. He states he paid \$300.00 to a company to look at the furnace, propane stove and fireplaces. He claims there was other work completed but the tenant could not recall what this was. The tenant states he did withhold his rent for October to pay for all the work done but did not give the landlord the invoices for this work.

The tenant seeks a Monetary Order for a loss of the heating system, a loss of the use of the fireplaces, a loss of the basement due to flooding, low water pressure, contaminated water, a loss of quiet enjoyment of his rental unit and for the repairs the landlord has failed to do.

The tenant claims the landlord has not maintained the property dispute being told about the repairs required. The tenant claims he contacted the landlord about this work and documented the required emergency work on the back of his rent cheques. The tenant claims the landlord entered the property without a legal 24 hours written notice and has been peering through his windows and taking pictures of his son without permission. The tenant claims when he rented the house it had four toilets but he found out only one works and this one has to be plunged every day. He claims there is very low water pressure as the landlord has linked a single family house water supply to four other properties one of which is a business. He claims the house is damp and he has mushrooms growing inside. BC Hydro came to do some work but had to stop



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due to water pouring over the electrical wires. He states BC Hydro also informed him that the landlord had moved the meter and put in two separate diversions to the power lines to other properties. The tenant seeks compensation of \$2,800.00.

The landlord disputes the tenants claims he states the meter was moved by the previous owner of the property and the power to the trailer and well was always run from the power lines to the tenants rental property. He claims separate meters were fitted for this and the tenant was notified of this.

The landlord disputes that he has entered the tenants unit he states he has given the tenant two 24 hour Notices to inspect the property and has been informed by the tenant that he will not be there during that time but his large dog will be. The landlord states the tenant has a large dog and he is not willing to enter the unit with the dog there if the tenant is not present. The landlord states he has not been able to come into the unit to look at the issues the tenant states he has been having with the toilets. The landlord states the tenant has not maintained the unit and if there are mushrooms growing it is because of the tenants' poor housekeeping skills.

The tenant states the heating system is not working and he requires the landlord to bring this up to code. A fire place needs to be installed and the chimney requires inspection as the tenant states he cannot obtain insurance as it is a fire hazard. The tenant states the landlord did bring a stove and wanted to wire it into the chimney however this cannot be done due to the problems with the chimney. The tenant states the furnace was inspected and all the vents were found to be blocked, the propane was found to be illegal and the living room fireplace has been condemned. The tenant also seeks an Order for the landlord to do any required repairs to the basement to prevent future flooding and to clear garbage left in the crawl space by previous tenants. The tenant seeks an Order for the landlord to comply with the *Act* by ensuring the rental unit is fit for occupation.

The landlord disputes the tenant claims. He states the tenant was informed about the fireplace and was told not to use it. He states the tin stove can be used as this was inspected by the previous owner. He states the wood burning stove is waiting to be put into the house but the

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tenant has so much mess around that there is no room to work. The tenant has been asked to clear up his mess but has not done so. The landlord states he has recently spent \$2,000.00 on the water filtration system. He claims this is iron water and will cause staining if the filter is not changed each year

The tenant seeks to reduce his rent for repairs not completed by the landlord and for services and facilities that have not been provided by the landlord. The tenant wants to reduce his rent to hire contractors to carry out repair work on the toilets, the water filtration system and heat to the house.

The tenant seeks to cancel the 10 Day Notices to End Tenancy but would be willing to move out if the landlord was to pay his moving costs. The landlord declines the tenants offer.

The tenants witness testifies that she helped the tenant move into the house and was surprised to see the poor condition of the house and yard. She claims she spoke to the landlord and discussed the terrible condition the house was in. She states the landlord told her he would replace the floors and this work was done. However, the landlord did not replace the boards on the porch which were old, rotten and slippery and the tenant replaced some boards with plywood. The witness claims the landlord asked her to meet him at the house to see how the tenant lives. She claims she went to the house and was asked to look through the windows without the tenants' permission. She states she found this to be invasive and disruptive for the tenant. The witness also states the house has been cold when she has visited the tenant there.

The landlord states that a pervious tenant had broken some boards on the porch and a lot of these were replaced.

The tenant has provided an inspection report for the space heater and flue pipe inspection carried out on August 31, 2010. This report states the system does not pass inspection and the fireplace is also not up to code.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the tenants application to cancel the Notices to End Tenancy; I find the tenant has provided no evidence of an agreement in place between him and the landlord that states he may deduct rent for repairs. I also find there has been no order in place allowing the tenant to deduct rent for repairs. Section 26 of the Act states:

26 (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.

The tenant argues that he deducted the rent for emergency repairs however the tenant has failed to provide evidence that emergency repairs were required with the exception of an inspection report concerning the space heater, flue pipe and chimney. The tenant has failed to provided evidence that he contacted the landlord on at least two occasions to make the repairs, that he gave the landlord reasonable time to make the repairs or that he followed section 36 (5) of the Act which states:

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

Consequently, I find the tenant owes rent to the landlord to the sum of 735.00 for September, 2010 and \$1,410.00 for October, 2010 which includes rent of \$1,395.00 and \$15.00 per month



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for water. It is therefore my decision that the landlord is entitled to an Order of Possession to take effect by October 31, 2010 pursuant to section 55 of the Act.

With regards to the tenants application for an Order for the landlord to comply with the Act and for an Order for the landlord to make repairs to the rental unit, site or property; as the tenancy will end I am not prepared to issue an Order in this matter and this section of the tenants application is dismissed.

With regard to the tenants claim for a rent reduction due to repairs, services or facilities agreed upon but not provided. Section 32 (1) of the Act states: 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.

It is my decision that the landlord did not clear the garbage left behind by the previous tenants; he did not make necessary repairs to the porch to ensure it was safe and he did not provide the tenant with a working heating system in the rental property. The tenant argues that there were other repairs required such as the toilets; however a tenant must allow the landlord access to the unit to assess the damage in order for repairs to be carried out. The tenant also argues that the water filtration system was not effective and led to contaminated water, discolouration and low water pressure; however, the tenant has provided insufficient evidence in this matter to support his claim. Consequently, I find the tenant is entitled to reduce his rent by \$100.00 per month for the length of his tenancy for a lack of heat, an unsafe porch, and garbage left by previous tenants. As the tenancy will end on October 31, 2010 I find that the tenant is therefore entitled to reduce his rent for October, 2010 by \$500.00 pursuant to section 65(f) of the Act.

With regard to the tenants claim for compensation for a loss of quiet enjoyment of his rental unit; the tenant states the landlord has invaded his privacy, taken photographs of his children and harassed him; however, in this matter the tenant has the burden of proof that the landlord has acted in such a way that has affected the tenants right to quiet enjoyment. The tenants witness states she was asked to look through the tenants windows with the landlord and the landlord

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has admitted to taking photographs of the property. The Residential Tenancy Policy Guidelines #6 discusses the right to quiet enjoyment and states: a tenant is entitled to reasonable privacy, freedom from unreasonable disturbances and exclusive possession, subject to the landlords' right under the legislation.

It is my decision that the relationship between the landlord and tenant has broken down to the point that the police were called. I also find a landlord is entitled to take photographs if he is seeking to provide evidence for this hearing. I find the accusation of harassment has not been proven in this matter but do find the landlord did invade the tenants privacy on at least one occasion by asking another party to look through the tenants windows with him. However, the Policy Guidelines also refer to 'frequent and ongoing interference by the landlord'.

Consequently, while I accept that the landlord did peer through the tenants windows with a third Party, the tenant has not proven that this was an ongoing or frequent invasion of his privacy and I therefore dismiss this section of the tenants claim.

I would caution the landlord in this matter to refrain from entering the rental unit, site or property unless 24 hours written notice has been given until the tenancy ends or unless an emergency occurs.

Conclusion

The Tenant's application to cancel the 10 Day Notices to End Tenancy is dismissed.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **October 31, 2010**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in partial favor of the tenants monetary claim. I HEREBY ORDER that the tenant may reduce the rent owed for October, 2010 by **\$500.00**.

The remainder of the tenants' application for compensation is dismissed without leave to reapply.



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The tenants claim for an Order for the landlord to comply with the *Act* and for an Order for the landlord to make repairs to the unit, site or property is dismissed without 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: October 18, 2010.

Dispute Resolution Officer