



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, ERP, RP, RPP, RR, FF (CNC)

Preliminary Issues

The tenant seeks to amend his application to include the section to cancel the Notice to End Tenancy for Cause. The tenant states he had omitted to check this section when he filed his application but this was the main reason he filed the application.

I have allowed this amendment pursuant to s. 8.4 of the Residential Tenancy Branch Rules of Procedure at the request of the tenant to uphold the principals of natural justice.

The tenant provided a disc containing evidence. This evidence was not considered as the tenant did not provide any means for me to view the contents of the disc.

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause, to obtain a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, a Monetary Order for the cost of emergency repairs, an Order for the landlord to make emergency repairs and other repairs, an Order for the return of the tenants personal property, an Order to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee for this application.

Service of the hearing documents were done in accordance with section 89 of the *Act*, and were hand delivered to the landlord on March 31, 2011. The landlord confirmed receipt of the hearing documents. Both parties filed evidence and served it on the other party late. As both parties

served this evidence late I have considered the evidence as no objections were raised by the parties.

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:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to a Monetary Order to recover the cost of emergency repairs?
- Is the tenant entitled to an Order for the landlord to make emergency repairs for health or safety reasons?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit?
- Is the tenant entitled to an Order for the landlord to return his personal property?
- Is the tenant entitled to reduce his rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant states his month to month tenancy started on July 01, 2006 and the landlord states she thinks the tenancy started in 2007. Rent for this unit is \$750 per month and is due on the first day of each month in advance. No written tenancy agreement is in place.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for unpaid rent however he paid the outstanding rent within five days. The landlord testifies that she also served the tenant with a One Month Notice to End Tenancy for cause on March 28, 2011 by posting it to the tenants' door. This notice has an effective date of April 30, 2011 and gave the following reason to end the tenancy: The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

The landlord testifies that the tenant has people coming and going from his unit and he has allowed other people to live in his unit without the landlords' permission. She testifies that the tenant has fights with his roommates and makes a lot of noise late at night. The landlord testifies that the tenant argues fights and threatens other tenants living in the building and since receiving this Notice the tenant has disturbed the other tenants again. She claims other tenants are afraid of this tenant. The landlord has provided three statements from three of the six tenants living in the building. These statements have not been notarized and no witnesses have appeared at the hearing. The landlord states she was unaware she could call witnesses.

The tenant testifies that he has not caused any disturbances in the building. He states one of the other tenants used to make racist remarks towards him and he called the police. This happened about two years ago and the police advised both tenants not to speak to each other. The tenant states that since that time they have not spoken and now live amicable.

The tenant testifies that there was an argument between him and an upstairs tenant over a parking space the landlord had allocated to him at the start of his tenancy. He states they both called the landlord and she confirmed it was his parking space so that has now been resolved. The tenant testifies that the landlord has asked other tenants to sign a letter to get him evicted from his unit and has offered them concessions to do so. The tenant questions the landlords' good faith in issuing this notice as he states he believes she wants to evict him so she can charge a higher rent for his unit due to upgrades he has made to his unit.

The tenant states he has experienced racist comments and a racist note put on his door. He states he had to call the police and this matter is being investigated. The tenant does not know who placed the note on his door but states the landlord has used racist comments towards him before. The tenant has provided a police file number concerning these allegations. The tenant states he does not sublet his unit or allow others to live with him. He states he broke his back and his brother comes to his unit to help him out each day but does not live with him.

The tenant seeks a Monetary Order for emergency repairs made for health and safety reasons. The tenant states since moving into the unit each time it snows and melts he has a flood in his sunroom. He states this soaks the carpet in this room and each year he has to have the carpet

cleaned and deodorised to ensure it remains sanitary. The tenant states he has informed the landlord of this problem and she offered him a fan to help dry the carpet, however the landlord never gave him the fan and he has had to pay the sum of \$85.00 plus tax to have the carpet cleaned.

The tenant testifies that he has experienced a problem with rats in his unit. He states he has notified the landlord and she sent someone to deal with the rats but it was ineffective. He states rats were in his cupboards and eating his food. He states the same person who cleaned his carpets also put down rat poison and traps. He states in three days he caught approximately 15 rats in the traps and since the poison has been down he has only found one rat in a trap. He states the landlord did provide him with some peanut butter for the traps. The tenant seeks to recover this cost of \$150.00 plus tax due to the landlord inability to resolve the problem and because it was an health issue.

The landlord disputes the tenants' claims. She testifies that the carpet gets wet because the tenant leaves his window open. She states the smell comes from the tenants' dog and if he has mice or rats it is because he leaves spilt dog food in a cupboard. The landlord claims she uses a professional pest control company to get rid of any rodents and they visit twice a year or when notified by the tenants that there is a problem.

The tenant disputes the landlords' claims. The tenant testifies that his window in that area only open three inches and that much water would not get through that small an opening. He states he does not leave the windows open when it rains and the flooding only happens after the snow melts a few times a year. The tenant states his dog is washed and groomed every two months and does not smell and states the whole building has a problem with rodents which the landlord is aware of

The tenant seeks to recover \$65.00 from the landlord because she used unqualified painters to paint the house and they over sprayed paint onto the tenants Bar-B-Que cover. The tenant states he is a qualified painter himself and offered these men the use of his drop sheets, as they did not have any, but they refused. He states the landlord offered to pay for his cover but she has not done so.

The landlord testifies that all tenants were informed that the house was to be painted and were asked to remove any personal belongings before the work commenced. The landlord claims the tenant did not remove his Bar-B-Que and agrees the cover may have got some paint on it.

The tenant no longer seeks an Order for emergency repairs, repairs or for the return of his personal belongings.

The tenant states he is seeking a reduction in his rent because he has had a problem with rats from April, 2009 until he paid to have them controlled in March 2011. The tenant also seeks a rent reduction as the landlord has failed to remedy the problem with his sunroom leaking since the winter of 2006. He states that he has had to pay \$85.00 a year to have the carpet cleaned in this room.

The landlord disputes this. The landlord testifies that the tenant only informed her this year about the flooding. The landlord also questions the validity of the receipt provided by the tenant and questions why the carpet cleaning and rat control would both be on the same receipt.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants request to cancel the One Month Notice to End Tenancy; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants claim for a Monetary Order for the cost of emergency repairs for health or safety reasons I find that the tenant has not met the criteria for making a claim for emergency repairs as specified under s. 33 of the *Act*. However I will deal with this section of the tenants claim under his claim for money owed or compensation for damage or loss. In this

matter I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I have reviewed the tenants' documentary evidence and am not satisfied that the tenant has met the burden of proof with regard to his claim for carpet cleaning and rat control. The tenant has provided one receipt for both these measures which I find questionable. The tenant has provided no other evidence that the sunroom flooded each year or of a continuous rat problem in his unit. The tenant has not shown how he mitigated his loss in this matter by informing the landlord in writing of any problems in order for her remedy the problems. The tenant has not shown the cause of the flooding. I find the landlord has been proactive in seeking professionals to deal with rodents in the building prior to this incident and on this occasion both the landlord and tenant used non-professionals to remedy the problem. In this instance the tenant should have informed the landlord again that he still had a problem with rats so she could have taken preventive action with the pest control company she used. Consequently, it is my decision that the tenant has not met the burden of proof in this matter. He has provided insufficient evidence to support his claim for \$265.55. Therefore, this portion of his claim is dismissed.

With regard to the tenants claim for \$65.00 for damage to his Bar-B-Que cover. In this matter the landlord argues that she told the tenant to remove his belongings because the house was

being painted. She argues that as the tenant did not remove his Bar-B-Que it may have got some paint on it. In this matter it is the responsibility of the landlord to ensure tenants belongings are protected when work such as this is carried out. If the tenant was unable to move his Bar-B-Que out of the way then the landlord should have ensured her workers covered it to prevent paint overspray from damaging the cover. Consequently, I find the tenant has established his claim for **\$65.00** for the cover.

With regard to the tenants claim for a rent reduction; As the tenant has not met the burden of proof with regards to the flood in his unit when it snows and with regard to a rat problem that was not treated by the landlord I must dismiss this portion of his claim also.

Conclusion

The tenant's amended application to cancel the One Month Notice to End Tenancy is allowed. The one Month Notice to End Tenancy for Cause dated March 28, 2011 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, he is entitled to recover his **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act* and may deduct that amount from his next rent payment when it is due and payable to the landlord.

The tenant is entitled to a monetary award of **\$65.00** pursuant to s. 67 of the *Act* and may deduct that amount from his next rent payment when it is due and payable to the landlord.

The remainder of the tenants application 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: April 20, 2011.

Residential Tenancy Branch