



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, RP, PSF, LAT, RR

Introduction

This was an application by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, a monetary order for compensation or damages or to reduce the rent, an order to force the landlord to comply with the Act or agreement by making repairs and providing services and facilities required by law, an order to permit the tenant to change the locks and the cost of the application..

Both parties appeared and gave testimony during the conference call.

Issues(s) to be Decided

The tenant was seeking to have the Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled, a rent abatement or monetary compensation, and other orders. The issues to be determined are:

- whether or not the Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled
- whether or not the tenant is entitled to compensation or a rent abatement
- whether or not the landlord should be ordered to comply with the Act by doing repairs and providing series an facilities required by law
- whether or not the tenant should be permitted to change the locks

Background and Evidence

The tenancy began on June 15, 2010 with rent set at \$650.00. The tenant paid a security deposit of \$325.00 and pet damage deposit of \$100.00. A copy of the written tenancy agreement and move-in condition inspection report was in evidence. Also in evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated March 8, 2011, written statements from each party, a copy of a notice restricting the laundry room usage to tenants, copies of letters from the electrician, copies of hydro bills and written witness testimony.

The tenant testified that, after receiving the Ten Day Notice to End Tenancy for Unpaid Rent, they had then attempted to pay the rent, but the landlord refused to accept it. The

tenant stated that the normal method of payment was in cash, with the landlord coming to the residence to collect the rent at the first of each month. The tenant testified that when the landlord arrived at the door on March 4 or 5th, the tenant attempted to engage the landlord in a discussion about promised repairs and other problems with the tenancy. According to the tenant, the landlord was not willing to talk and did not take the rent. The tenant testified that the landlord left after telling the tenants that they could just move out. The tenant stated that the landlord's refusal to accept the rent nullified the Ten Day Notice to End Tenancy for Unpaid Rent as the tenant had a right to pay within the 5-day deadline after receiving the Notice. The tenant is seeking an order to cancel the Notice on that basis.

The tenant testified that when they first rented the unit, the landlord had failed to disclose that the tenant would be paying utilities for hydro being used outside of their own rental unit. The tenant testified that, although they had since received assurances from the landlord that the hydro problem had been completely resolved, they were never reimbursed for any portion of the past hydro that they were being billed for during the first 6 months of the tenancy. The tenant also testified that they do not believe that the hydro situation was ever completely corrected, as the charges on their hydro invoice did not significantly decrease since the alleged repair. The tenant is seeking a retro-active rent reduction for losses associated with the hydro.

The tenant testified that they were also deprived of the use of the laundry for significant periods of time, as the pipes repeatedly froze due to lack of a heat source in the space. The tenant stated that they had been forced to clean up a flood in the laundry room. The tenant testified that, when they reported the problems to the landlord, she was not willing to take any steps to ensure that they could use this facility without interruption, despite the fact that it was included as part of the rent. The tenant was seeking compensation for the loss of the laundry use and seeking an order to force the landlord to make this facility functional.

The tenant testified that the landlord had also promised to make some repairs to the unit which were never done. The tenant testified that the outstanding repairs include:

- Fix broken windows
- Repair a hole in the floor covered by vinyl
- Replace bathroom faucet that can't be operated without using a wrench
- Fix a window latch that is preventing the bathroom window from closing properly
- Add a second smoke detector
- Supply a lid to secure the garbage bin or reimburse tenant for purchase of cans
- Repair or rebuild back deck to make it safe
- Ensure that the laundry room is heated and functional in cold weather

The landlord denied that she had ever refused to take the rent from the tenant.

The landlord testified that the hydro panel situation was fully resolved and that none of the tenant's hydro bill relates to power that was used by anyone but the tenants. The landlord referred to two letters in evidence from the electrical contractor which stated that all electrical hazards and code violations were rectified and confirmed that, by December 20, 2010, the circuits connected to the tenant's panels are all in their respective units with none of the house loads connected to the tenant's panels. The landlord made unsubstantiated allegations that the tenant's higher hydro bills were likely being caused by a "grow-op". During the hearing an attempt was made to contact the contractor to add his witness testimony, but the person who authored the letter could not be reached.

The landlord disputed the allegation that the washer and dryer facilities were ever restricted nor that the machines had been rendered of no use for any significant duration during freezing temperatures. The landlord also stated that the tenants had been permitting others to use the washer and dryer facilities as the landlord had found girls clothing in with a load.

The landlord stated that the tenants appear to be running a daycare in the suite. The tenant did not deny that they were taking care of children as a source of income.

With respect to the tenant's request for specific repairs, the landlord consented to complete the listed repairs within 4 weeks.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 46 permits a landlord to issue a Ten Day Notice to End Tenancy for Unpaid Rent if the rent is not paid when it is due, and the tenant then has 5 days in which to pay the rent to cancel the Notice. I find that the parties are at odds regarding what transpired before and after the Ten Day Notice to End Tenancy for Unpaid Rent was served.

Given that the method of rent payment has been contingent upon the landlord attending the unit on the precise day that the rent is due, and on the tenant also being home at the time the landlord arrives, I find that this method of rent collection is likely to create problems for both parties. In this instance, the tenant alleged that the landlord did not attend on the first day of the month and the landlord stated that she did attend, but the tenant was not available. With respect to the efforts to pay after the Notice was served, the landlord's testimony was that the tenant refused to pay and the tenant's testimony

was that the landlord refused to accept the payment. To avoid future discrepancies of this nature, I therefore find it necessary to order that henceforth the rent must be paid by the tenant by money order delivered to the landlord's mailbox or mailed to the landlord to arrive on the first day of each month. The tenant is to retain the money-order receipt as verification of payment.

With respect to the Ten Day Notice to End Tenancy for Unpaid Rent, although I accept that the tenant did not pay the rent when rent was due, it is not clear whether or not the tenant was permitted to pay the arrears prior to the expiry of the five-day deadline to cancel the Notice. Accordingly, I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated March 8, 2011 is cancelled and of no force nor effect.

With respect to the dispute over the utilities, I find that the confusion regarding the payment of utilities was created by the fact that there were genuine problems in the past with the way the building was wired. Because of this situation, the tenant had evidently paid for some hydro usage that was not solely for the tenant's unit. There is no way to know the exact amount that the tenant was overcharged. Therefore, I find that the tenant is entitled to a rent abatement of \$650.00 as compensation in full for all of the hydro charges to date. I grant a rent abatement and order that the tenant reduce the rent owed for the month of March by this amount.

Although the landlord testified that the hydro problem has been fully resolved and provided a written statement from the electrical contractor, the tenants testified that this is not so. In the absence of the witness who had authored the statement, I found that the tenant had no opportunity to cross examine this individual on the evidence to confirm that the hydro service to the tenant was solely for their own unit as stated. Given the complications affecting the utility service, I find it necessary to place the responsibility for the hydro account on to the landlord and to include the cost of electricity in the tenant's monthly rent. Accordingly, I order that the landlord transfer the hydro account into the landlord's name and assume all responsibility for payment. The tenant's rent will therefore be adjusted from \$650.00 per month, not including hydro, to \$775.00 per month including hydro.

With regard to the tenant's claim for a rent abatement based on the condition of the unit, The tenant has claimed compensation in the form of a retro-active rent abatement for devalued tenancy due to the landlord's failure to comply with the Act.

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount or order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 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 that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. The tenant has claimed that the tenancy was devalued by persistent roof leaks, problems with the heat, hot water and refrigeration and the landlord did not dispute that these problems were reported to the landlord.

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. As the landlord has now committed to completing the list of repairs within one month of this decision, I find that the matter is likely now resolved. The issue with the freezing pipes in the laundry will also be addressed, according to the landlord. That being said, the tenant has suffered a loss of use of the deck, and partial use of the laundry and I find that the tenant is entitled to a modest retro-active abatement to compensate for this inconvenience. I set the amount of compensation at \$150.00.

Should the promised repairs not be completed within 30 days of receiving this decision, the tenant is at liberty to make application for further compensation.

Conclusion

I hereby order that the monthly rental rate for the tenant's unit, beginning in May 2011 will be \$775.00 and will include utilities and I order that the landlord have the utility account transferred into the landlord's name as of May 1, 2011 without delay. I further

order that the rent will be paid by money order delivered or sent to the landlord by the tenant and arriving on or before the first day of each month.

I hereby order that the tenant deduct \$650.00 from the rent owed to the landlord for the month of March 2011. I also order that the tenant deduct \$200.00 from rent owed for the month of April 2011 as a one-time lump-sum abatement which includes \$150.00 for the past loss of use of facilities and the \$50.00 cost of this application.

I order that the landlord complete the list of repairs within 30 days of the receipt of this decision, failing which the tenant is at liberty to make a subsequent application for dispute resolution.

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, 2011.

Residential Tenancy Branch