Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with cross applications. The tenant had applied to cancel a Notice to end Tenancy for unpaid rent and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage or loss under the Act, regulation or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the proceeding I heard that the tenant has vacated the rental unit and the landlord has regained possession of the rental unit since these applications were filed. Accordingly, it is no longer necessary to determine whether the Notice to End Tenancy should be upheld or cancelled or whether an Order of Possession should be issued. Therefore, the remainder of this decision pertains to the respective monetary claims filed by each of the parties.

Issue(s) to be Decided

1. Has the landlord established an entitlement to unpaid rent for September and October 2011?
2. Has the landlord established an entitlement to compensation for damage to the rental unit?
3. Has the tenant established an entitlement to recover costs associated with repairs made to the residential property under the Act?
4. Has the tenant established an entitlement to return of the rent he paid for rent for the month of August 2011?

Background and Evidence

I was provided the following undisputed evidence. A written tenancy agreement was executed by the parties on July 21, 2011. Pursuant to the written tenancy agreement, the tenancy was set to commence August 1, 2011 for a fixed term of 12 months and the

tenant was to pay rent of $1,550.00 on the 1st day of every month. Also on July 21, 2011 the tenant paid $1,500.00 for August 2011 rent and the landlord did not pursue the remaining $50.00 due.

The tenancy agreement provides that the tenant was to pay a security deposit and pet deposit totalling $1,155.00 upon completion of renovation of the downstairs bathroom and that a receipt would be issued upon completion of the renovation. Both parties agreed that the tenant was to renovate the downstairs bathroom and receive credit towards payment of the security deposit and pet deposit.

The move-in inspection report indicates several areas of carpeting were dirty and stained and that certain walls required painting. It also indicates “bathroom needs work” in the basement section of the report. On the inspection report there is space to indicate which repairs to be completed at start of tenancy. In that space the following is recorded: “bathroom downstairs to be renovated by tenant for his damage deposit depending on final estimate.” The inspection report is dated August 1, 2011 and is signed by both parties. The completed condition inspection report indicates the tenant agreed that the report fairly represented the condition of the rental unit.

The landlord submitted that he received an email from the tenant on October 7, 2011 advising the landlord he was moving out and on October 8, 2011 the landlord attended the property and regained possession. The tenant submitted that he vacated the rental unit in the first week of October 2011 but acknowledged he had not returned the keys.

Unpaid rent

The landlord is seeking to recover unpaid rent for September and October 2011 by way of this application.

It was undisputed that the tenant did not pay the landlord any monies for rent for September or October 2011. It was undisputed that the landlord issued the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on September 15, 2011 and sent it to the tenant via registered mail. The tenant signed for the registered mail on September 20, 2011 and disputed the Notice two days later.

Both parties provided consistent testimony that when the tenancy formed there was discussion about future renovations the landlord planned to make to the rental unit and the tenant’s ability to do renovations. The parties also provided consistent testimony that the landlord had communicated to the tenant that the landlord’s priority for renovations was the downstairs bathroom. It was further undisputed that when the landlord contacted the tenant at the end of August 2011 to enquire about September’s

rent, the tenant advised the landlord that he had spent his rent money buying $1,600.00 of new flooring for the upper level of the house. Both parties pointed to an email from the landlord to the tenant dated September 6, 2011 as evidence as to what transpired after the flooring was purchased and the tenant's requirement to pay rent.

The landlord submitted that after learning that the tenant had removed the carpeting and a wall on the upper floor and purchased new flooring material, the landlord felt it prudent to try to work with the tenant in an effort to remedy the situation. The landlord explained his intention was to limit the amount of future renovations and expenditures by way of the September 6 email and get the flooring installed on the upper floor since the old flooring was removed by the tenant. When the landlord inspected the rental unit September 12, 2011 he verbally told the tenant to cease all work and then followed that statement up with an email received by the tenant September 14, 2011.

The tenant submitted that in July 2011 the landlord and tenant had reached a verbal agreement whereby the tenant would renovate the rental unit and his labour would be deducted from rent at the rate of $25.00 per hour. As part of that agreement the landlord would be responsible for paying for materials and the cost of the flooring installers. The tenant acknowledged that he did not present the landlord with a number of hours worked when it came time to pay September's rent; however, the tenant was of the position that upon seeing the removal of the carpeting and wall it is obvious the tenant spent several hours of his time renovating the rental unit. The tenant also acknowledged that he decided to remove the upper floor carpeting and wall before starting on the bathroom renovation due to his health condition and his determination that the carpets were too filthy to be cleaned.

The landlord refuted the tenant's submission. The landlord was of the position that he clearly communicated to the tenant that he wanted the bathroom renovated and the agreement was that the compensation for the bathroom renovation would take the form of a credit for the security deposit and pet deposit. Further, the landlord was of the position that he clearly communicated to the tenant that he did not want to be "an open cheque book" and this was witnessed by another person who provided the landlord a written statement to that effect. While the landlord acknowledged that future renovations were discussed with the tenant the landlord denied that he gave pre-approval to the tenant for any renovations except the bathroom.

The tenant was of the position that the landlord was compensated for September's rent was by way of his labour and that he should not have to pay any rent for October 2011 given the mould presence in the rental unit. The tenant pointed to an environmental inspection he paid to have done on September 29, 2011. The landlord pointed to the

report as being focused on the bathroom which the tenant gutted after the landlord told him to stop working on the house on September 12, 2011. The tenant acknowledged that he removed portions of the downstairs bathroom after the meeting with the landlord on September 12, 2011.

Damage to rental unit

The landlord is seeking to recover damages to the property caused by the tenant's partial renovations. The landlord stated that he has not yet obtained written estimates but the landlord will settle for the amount the tenant put forth as the cost to replace the upstairs flooring, or $3,500.00. The landlord submitted that although a portion of the flooring has been laid, the tenant took the uninstalled flooring when he left.

The tenant disagreed with the landlord's request for $3,500.00 as finishing the flooring will not cost $3,500.00.

Tenant's claim for compensation

In filing this application the tenant requested compensation of $5,000.00 for damage or loss under the Act, regulations or tenancy agreement. In the details of dispute the tenant states that he "had agreement with landlord to work on property in labour to go toward rent materials paid by landlord". On another page of details, the tenant explained his version of events as to what was agreed upon with the landlord with respect to renovations and dirty carpets.

Included in the tenant's evidence were copies of receipts for various construction material purchases along with a list of items for which the tenant is seeking compensation, which I have reproduced as written:

Materials	$ 2,228.12
Install floors to this point	1,152.00
Labour - other work 65 hours @ $25	1,625.00
Return of Rent paid for August due to unhealthy house and necessary repairs	1,500.00
Filing fee paid for this application	100.00
Total	$ 5,605.12

I noted that the majority of the receipts related to flooring material purchases and the purchase of a shower stall for the upstairs bathroom. The tenant was of the position that, despite knowing the landlord's priority was renovation of the downstairs bathroom, the tenant determined that the carpeting was of greater importance because of the tenant's health condition (COPD). The tenant was of the position the landlord did

authorize the tenant to remove the carpeting and purchase the flooring materials. The landlord denied authorization for such work or purchases.

As the parties were informed during the hearing, my authority to resolve disputes is as provided under the *Residential Tenancy Act*. Accordingly, I must uphold the Act and/or terms of the tenancy agreement but I cannot resolve disputes arising from other types of contracts such as a contract for services. Accordingly, I have considered whether the landlord had agreed to waive rent under the landlord's claim for unpaid rent and I have considered whether any of the purchases made by the tenant fall under the definition of emergency repairs, as provided under the Act.

With respect to the tenant's request for return of rent paid for August, the tenant submitted that during the month of August he could not live in the rental unit because of the dirty carpets and he spent the month of August removing the carpets and wall between the living room and kitchen.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based upon the evidence before me, I make the following findings and provide the following reasons for those findings.

Landlord's application

Unpaid rent

I have been presented with a signed tenancy agreement in support of the landlord's claim for unpaid rent. The tenant has submitted that there was a verbal agreement reached with the landlord before and after the signing of the tenancy agreement that permitted the tenant to withhold rent. I find that the tenant's submission with respect to rent payable to the landlord constitutes *parol* evidence.

“Parol” refers to verbal expressions or words and in the context of contracts, parol evidence refers to extraneous evidence such as an oral agreement or even a written agreement, that is not included in the relevant written document. The parol evidence rule is a principle that preserves the integrity of written documents or agreements by prohibiting the parties from attempting to alter the meaning of the written document through the use of prior and contemporaneous oral or written declarations that are not referenced in the document.

Terms of a contract are commonly proposed, discussed, and negotiated before they are included in the final contract. The parol evidence rule provides that when parties put their agreement in writing, all prior and contemporaneous oral or written agreements merge in the writing. A tenancy agreement cannot be changed unless done so in a manner that complies with the Act. In order to change a tenancy agreement both the landlord and tenant must agree to the change and since the tenancy agreement was in writing, any agreed upon change should be in writing so as to reflect what was agreed upon.

In light of the above, I exclude the parol evidence put forth by the tenant and uphold the terms of the written agreement. Accordingly, I find the landlord entitled to rent for the month of September 2011 under the tenancy agreement. I do not find sufficient evidence the landlord waived his entitlement to collect September rent by way of the September 6, 2011 email as submitted by the tenant. Rather, I find the email indicative of the landlord’s attempts to negotiate with the tenant as evidence by the landlord’s statements in the email: “Do you agree with this or what are your thoughts? I know you hate typing but this is a real easy way to keep track of everything.” In the absence of evidence that the parties actually reached an agreement that the tenant could withhold September’s rent I find that the email is evidence of an attempt to negotiate only.

I further find the tenant responsible for unpaid rent for the month of October 2011 as the tenant continued to occupy the rental unit into October 2011 and did not end the tenancy in a permissible manner prior to the end of September 2011.

I reject the tenant’s position that he should not be held responsible for October 2011 rent due to mould in the downstairs bathroom. In situations where mould is present in a rental unit, a tenant may show entitlement to compensation for loss of use of that portion of the rental unit. However, in this case I find it more likely than not that the mould was exposed after the tenant removed portions of the downstairs bathroom which, I find, the tenant did after the landlord told the tenant to cease repair work. Further, given the environmental inspection was conducted on September 29, 2011 I

find it more likely than not that the tenant's sole purpose for obtaining that report was in an attempt to avoid his obligations to pay rent for October 2011.

Security deposit and pet deposit
The landlord had requested that he be awarded the amount of the security deposit and pet deposit. I make no such award as the tenancy has ended. However, based upon the evidence before me, I make a finding that the security deposit and pet deposit were not paid by the tenant or otherwise earned by the tenant by way of completion of the downstairs bathroom.

Damage to the rental unit
At the time of filing the landlord's application the tenant was still in possession of the rental unit and any damages had not been ascertained. The landlord's application was not amended after the tenant vacated. Therefore, I declined to consider the landlord's request for compensation for damage to the rental unit and that portion of the landlord's claim is dismissed with leave to reapply.

It is important to note that I have made no determination as to whether any damages to the rental unit are the result of the tenancy or a contract for services that was not fulfilled.

Tenant's application
As explained to the parties during the hearing, I do not have authority to decide disputes involving contracts other than tenancy agreements. Accordingly, I have the authority to uphold the terms of a tenancy agreement, the Residential Tenancy Act and its regulations.

Where a landlord and a tenant have entered into another type of contract, such as a contract for services, the parties must resolve any dispute arising out of that contract in the appropriate forum.

With respect materials and labour costs incurred by a tenant for repairs to a rental unit, the only part of the Act that would entitle a tenant to compensation pertains to emergency repairs.

Emergency repairs are defined in section 33 of the Act and must be for the purpose of one of the following:

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems,

I find the tenant's purchase of flooring materials and a shower stall were not for emergency repairs, as defined by the Act. Therefore, I find the tenant not entitled to recover those amounts under the Act.

With respect to the tenant's claim to recover the rent paid for August 2011 due to unhealthy conditions, I find the evidence does not support such an entitlement. While the move-in inspection report does show dirty and stained carpets I find insufficient evidence that the rental unit was not suitable for occupation by the tenant. Nor does the evidence indicate that the tenant requested that the carpets be cleaned. Therefore, I find insufficient evidence that the tenant did not live in the rental unit in August 2011 or made reasonable efforts to obtain carpet cleaning. The tenant's request to recover the rent paid for August 2011 is dismissed.

Monetary Order

The landlord's has been awarded $3,100.00 for unpaid rent for September and October 2011. I further award the landlord $50.00 for the filing fee. I have found there is no security deposit or pet deposit to offset to the unpaid rent.

Since all of the tenant's claims have been denied, I provide the landlord with a Monetary Order in the total amount of $3,150.00 to serve upon the tenant and enforce as necessary.

Conclusion

The landlord has been provided a Monetary Order in the amount of $3,150.00 to serve upon the tenant. The landlord's claim for damage to the rental unit has been dismissed with leave. The tenant's application has been dismissed in its entirety.

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: November 8, 2011.

Residential Tenancy Branch