



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR, OLC, RP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their concerns with one another. The tenant confirmed that he received the landlord's 10 Day Notice posted on his door on January 18, 2012. The landlord confirmed that she received a copy of the tenant's original dispute resolution hearing package sent by the tenant by registered mail on January 19, 2012. She also confirmed that she received a copy of his amended hearing package, including his request for more time to make his application and to cancel the landlord's 10 Day Notice, when it was left for her in her mail slot on January 31, 2012. I am satisfied that these documents have been served to one another.

Issues(s) to be Decided

Should the tenant be granted an extension of time to make his application to seek cancellation of the landlord's 10 Day Notice? Should the landlord's 10 Day Notice be cancelled? Should an order be issued to the landlord requiring her to comply with the *Act*, regulation or tenancy agreement? Should an order be issued to the landlord to make repairs to the rental unit? Is the tenant entitled to recover his filing fee?

Background and Evidence

This tenancy commenced as a fixed term tenancy on July 1, 2009, converting to a periodic tenancy after the initial term expired. Monthly rent is currently set at \$1,578.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$747.50 security deposit paid on June 20, 2009.

The tenant provided the following "Details of Dispute" in his original application for dispute resolution:

1. *Landlord is refusing to resume the renovation at the bathtub until unjustified damages of \$110 is paid.*
2. *The landlord is refusing to recognize my "right to Quiet Enjoyment" and is refusing to provide work schedule before starting the work.*
3. *The January rental is reduced to cover the cost of purchasing fridge drawer unit that landlord agreed to pay for. The landlord denying this agreement and threatens me with 10 day eviction notice.*

The tenant submitted his amendment to his application for dispute resolution to include an application to cancel the landlord's 10 Day Notice eleven days after he received it. At the hearing, he explained that he delayed applying to cancel the 10 Day Notice until after the five day period expired as he thought that his previous application for dispute resolution would allow him to seek cancellation of the landlord's 10 Day Notice.

The parties agreed that the tenant paid \$57.46 to replace a broken fridge drawer in this rental unit. The tenant claimed that the landlord made an oral agreement with his wife that she would reimburse the tenants for the cost of replacing the fridge drawer. The landlord denied having made any oral agreement with the tenant or his wife to cover the cost of replacing the fridge drawer which she considered to be damage that occurred during this tenancy. The tenant admitted that the drawer was not broken when the tenancy began. He said that he withheld \$57.46 from his rent when the landlord failed to reimburse him for this amount. He said that the landlord did not object to his reduced January 2012 rent cheque of \$1,528.54 paid on December 31, 2011, until she sent the 10 Day Notice to him on January 18, 2012.

The landlord said that she was seeking recovery of the \$57.46 in unpaid rent owing from January 2012 and \$110.00 in losses she incurred when the tenant and his wife refused to allow repair workers to access their rental unit for scheduled work on January 16, 2012. She provided a receipt for the two-person call-out charge she had to pay as a result of the tenant's denial of access to their rental unit to conduct repair work. The landlord has not filed a separate application for dispute resolution. The landlord made no request regarding the 10 Day Notice she issued on January 18, 2012.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all outstanding issues in dispute between them on the following terms:

1. The tenant agreed to pay \$57.46 in outstanding rent to the landlord by 5:00 p.m. on February 17, 2012.
2. Both parties agreed that if the tenant pays the landlord \$57.46 by 5:00 p.m. on February 17, 2012, the landlord's 10 Day Notice will be cancelled and this tenancy will continue.
3. Both parties agreed that the landlord will conduct bathroom repairs to the rental unit to replace wall tiles, to install a shower curtain rail, and to repair holes in the ceiling.
4. The landlord committed to notify the tenant at least five days in advance of a consecutive five day period from 10:30 a.m. until 4:30 p.m. when the repair work to the tenant's bathroom will be conducted.
5. The tenant committed to allow the landlord's repair workers to access the rental unit to conduct bathroom repairs for a consecutive five-day period between the hours of 10:30 a.m. to 4:30 p.m.
6. Both parties agreed that if the landlord abides by the terms of this agreement and the tenant(s) refuse(s) to allow the landlord's repair workers access to the rental unit at the appointed time, the tenant will pay the landlord \$110.00 in compensation for costs that the landlord may incur arising out of this refusal.
7. Both parties agreed that the repair workers commissioned by the landlord will affix taped covering to protect the carpet in the rental unit for at least a two day period while the repairs are being conducted.
8. Both parties agreed that the landlord will complete the repair work outlined in this agreement by April 30, 2012.
9. Both parties agreed that if the landlord has not completed the repair work outlined in this agreement by April 30, 2012, the tenant will be allowed to reduce monthly rent by \$200.00 for each month until such time as the repair work has been completed, at which time rent will revert to the regular scheduled amount.
10. Both parties agreed that the landlord will be allowed to schedule an inspection of the furnace in the rental unit with 24 hours written notice.

11. Both parties agreed to abide by all the terms of this agreement and that this agreement constituted a final and binding resolution of all matters in dispute arising out of this tenancy for both parties at this time.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

In order to implement the above settlement reached between the parties, I cancel the landlord's 10 Day Notice if the tenant abides by the first term of the above-noted settlement agreement, in which case this tenancy will continue. I also order the landlord to conduct repairs as set out in the settlement agreement to the bathroom wall tiles, to install a shower rail and to repair holes in the ceiling of the tenant's bathroom by April 30, 2012. If these repairs are not completed by that date, I order the tenants to reduce their monthly rent for May 2012 and all subsequent months by \$200.00 per month, until these repairs have been completed. In that event, this rent reduction will be cancelled for the month after the repairs are completed at which time the regularly scheduled monthly rent will resume for this tenancy.

I also issue a monetary Order in the landlord's favour in the amount of \$167.46 to be utilized in support of the above agreement for use **only** in the event that the tenant does not abide by the terms of the above settlement and in particular Terms 1, 5 and 6 as set out above. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after the tenant's breach of the above-noted terms of this agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. If the tenant abides by Terms 1, 5 and 6 of the above agreement, this monetary Order is of no effect and cannot be implemented by the landlord. I dismiss all other elements of the tenant's 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: February 17, 2012

Residential Tenancy Branch