



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, LRE, RR, FF

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy for unpaid rent; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to order the landlord to comply with the Act, regulation, or tenancy agreement; to make emergency repairs; to suspend or set conditions on the landlord's right to enter the rental unit; to allow a tenant to reduce rent; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?
Is the tenant entitled to a Monetary Order, and for what amount?
Should the landlord be issued orders as requested?
Should the tenant be allowed reduced rent?
Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a small multi-unit complex. The tenancy started on August 15, 2011. The rent is \$810.00 per month and the tenant paid a security deposit of \$810.00.

The landlord testified that on August 12, 2011, the tenant paid \$810.00 in rent and \$405.00 for security deposit for a sum of \$1215.00. The landlord stated that on

September 2, 2012, the tenant paid \$810.00 in rent. She stated that the tenant called her on February 22, 2012 concerning an overpayment of the security deposit, and to use the \$810.00 paid at the start of the tenancy towards March rent. The landlord said that she agreed, but that only \$405.00 ought to be used and that the remaining \$405.00 will be the proper amount for the security deposit. The landlord stated that the tenant still owes \$405.00 as outstanding rent for March, which the tenant refuses to pay.

The tenant testified that the landlord did not request a security deposit, and that the landlord's son collected first and last month's rent at the start of the tenancy. She stated that after receiving information from the Residential Tenancy Branch in February, she called the landlord on the 27th of that month to tell her that she could use the last month's rent that she gave her son in August 2011 for March rent. The tenant said that the landlord did not request a security deposit until February 27, 2012.

The landlord stated that she never met the tenant; she said that a security deposit was required and that a full month's rent taken for this purpose was either an oversight or an error. The landlord said that the tenant continues to be in arrears; however, that if she wants to pay the rent owing she is free to stay at the rental unit.

In her documentary evidence, the tenant provided hundreds of photographs of the rental unit. She submitted that she was denied access to the rental unit in August and that she did not move in until September 2, 2011. She said that there are a number of issues with the unit. She said that the landlord is a lawyer, and that this professional status constitutes special circumstances as the landlord intimidates her. The landlord said that she was not made aware of any issues until this dispute with the security deposit arose in late February.

Analysis

Section 26(1) of the *Act* specifies in part that a tenant must pay the rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. Although the tenant states that she paid rent, her testimony was not consistent; she stated that the landlord did not request a security deposit until February 27, 2012. Yet, she made continual reference to the last month's rent taken by the landlord's son as security deposit. In her documentary evidence, the tenant provided a copy of a handwritten receipt from the landlord, confirming receipt of \$1215.00 of which \$810.00 was for rent and deposit, and \$405.00 as rent for half of August. I find the document inconsistent with the parties' testimony; nevertheless I do find that a security deposit was discussed and taken at the start of the tenancy.

Based on the above, I authorize the tenant to deduct an overpayment of \$405.00 from the security deposit, and to apply it towards March 2012 rent. I also order the tenant to pay the landlord a balance of \$405.00 by no later than March 31, 2012 for the balance of that month's rent. The landlord is now in possession of a security deposit of \$405.00.

Section 13(1) of the Act states that; every tenancy agreement entered into on or after January 1, 2004, must be in writing. I order that the landlord comply with this section and provide the tenant with a copy of the agreement duly completed. Tenancy agreements are available online through the Residential Tenancy Branch website.

Concerning the remaining aspects of the tenant's application; the landlord was not made aware of any problems until late February, when the tenant raised an issue with the security deposit on the 27th, and she made an application for dispute resolution of March 8, 2012. In the circumstances, it is my decision not to deal with these issues under this application. The landlord did not object to continuing the tenancy if the tenant paid her rent and the tenant agreed to pay by March 31, 2012. The Act allows for the landlord to have reasonable time to make repairs. The tenant expressed her interest in staying in the rental unit rather than moving out. The terms of this tenancy were not lucid from the start and the parties have an opportunity to correct this. If the landlord intends to use agents on her behalf, she is responsible for the representations made by these agents.

S 32(1) of the *Residential Tenancy Act* provides in part that 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, and to make it suitable for occupation by a tenant. The tenant is free to make a new application for dispute resolution if the landlord fails to address the issues within a reasonable amount of time.

Landlords and tenants under a tenancy agreement owe a statutory obligation towards one another. The landlord has a duty of care and a right to enforce a tenancy, and the tenant is entitled to certain rights pursuant to the Act. Repeated breaches by any party do not prevent the other from making future applications for dispute resolution and to present comprehensive, relevant and timely evidence which, at that time may generate a different outcome.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant is ordered to pay the landlord unpaid rent of \$405.00 by March 31, 2012. If the tenant fails to comply, the landlord is at liberty to issue a new notice to end tenancy.

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: March 27, 2012.

Residential Tenancy Branch