



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AAT, OLC, RP, ERP, LRE, PSF, FFT, MNDCT, MNRT, OT, RR

Introduction

This hearing convened as a result of a Tenant's Application filed on May 15, 2018 wherein he sought the following relief:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on May 11, 2018 (the "Notice");
- an Order allowing the Tenant access to the rental unit;
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Regulations*, and the tenancy agreement;
 - make repairs, emergency and otherwise, to the rental unit;
 - be restricted from entering the rental unit;
 - provide services or facilities as required by law;
- monetary compensation from the Landlord;
- an Order allowing the Tenant to deduct the cost of repairs, services or facilities from the rent; and,
- to recover the filing fee.

The hearing was conducted by teleconference on July 11, 2018. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant incorrectly spelled the Landlord's name on the Application for Dispute Resolution. Pursuant to section 64(3) of the *Act* I amend the Application to correctly name the Landlord.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. The Tenant's request for compensation for emergency repairs is related to the validity of the Notice as it may affect the amount of rent he is to pay. The balance of the Tenant's monetary claims are not sufficiently related and I therefore exercise my discretion and dismiss the Tenant's monetary claims with leave to reapply.

For reasons which will be further detailed, matters which relate to the continued tenancy are no longer relevant; accordingly those claims are dismissed without leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Tenant be credited for payment of emergency repairs against any rent paid?
3. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving the reasons for issuing the notice on a balance of probabilities. Accordingly, although the hearing convened as a result of a Tenant's application, the Landlord testified first.

Introduced in evidence was a copy of the residential tenancy agreement between the Landlord and two Tenants, J.J. and G.R. This agreement indicated that this one year fixed term tenancy began June 1, 2017 and was to end May 31, 2018. Additionally, the agreement provided that monthly rent was payable in the amount of \$1,100.00, plus 1/3 of the utility bills, payable on the first of the month. The Tenants also paid a \$550.00 security deposit.

On September 1, 2017 the Tenant, G.R., terminated her tenancy. After she moved out the Landlord continued to accept rent from the Tenant, J.J., such that although G.R. ending the tenancy effectively ended the tenancy for both Tenants, the tenancy continued with J.J.

On May 11, 2018 the Landlord issued the Notice indicating that the sum of \$1,100.00 was outstanding for rent and \$316.00 for utilities. The document indicated that the Notice was served by posting to the rental unit door on May 11, 2018. The Landlord also confirmed this service in his testimony.

The Tenant applied for Dispute Resolution on May 15, 2018.

The Landlord confirmed that the Tenant failed to pay rent for May 2018, June 2018, and July 2018 rent such that at the time of the hearing the sum of \$3,300.00 was outstanding for rent.

The Tenant also failed to pay the 1/3 of the utilities. As noted on the Notice, as of May 1, 2018 the amount of \$316.00 owed; the Landlord testified that as of the date of the hearing the sum had increased to \$450.51 for outstanding utilities.

In reply, the Tenant testified as follows. He confirmed that he receive the Notice on May 11, 2018 as it was posted to his door.

The Tenant confirmed that he did not pay his May, June and July rent. He stated that he did not do so as the Landlord has not been maintaining the rental property as required.

The Tenant was cautioned that failure to pay rent may result in the end of his tenancy unless he had a legal reason, under the *Act*, not to pay rent. Such reasons include an overpayment of a security deposit, an Order from an Arbitrator and compensation for emergency repairs as provided for in section 33 of the *Act*. As a courtesy to the Tenant I read section 33 in its entirety to him.

The Tenant then testified that the following emergency repairs should be considered in relation to his obligation to pay rent:

- The Tenant stated that the toilet leaks everywhere and there is “black mould”. The Tenant stated that he sealed the toilet with silicone. He confirmed that he did not have a receipt for the silicone as he brought it from work. He also confirmed he did not have a report from a mould specialist confirming the toxicity of the mould.
- The Tenant stated that he does not have access to the heating thermostat. He confirmed that he has plug in heaters. The Tenant stated that if the Landlord refused to turn the heat on, he would put in his plug in heaters. The Tenant also claimed that due to the condition of the rental unit, he caught pneumonia and he lost his job over this. He confirmed that the majority of his monetary claim (which was dismissed with leave to reapply as noted earlier in this my Decision) relates to his claimed lost income.
- The Tenant stated that from May 1-8, 2018 he did not have power, claiming the Landlord disconnected his power source. He stated that it was his birthday on May 7, 2018 and he was not able to have people over for his party. The Tenant also stated that as his refrigerator did not work, his food was spoiled and he lost \$200.00 worth of food. He did not provide any receipts to confirm this amount. He also stated that the refrigerator has not been opened for two months as he knows the food is spoiled and doesn’t want to clean it.
- The Tenant claimed that there is a defective lock on his patio which he has to keep closed with duct tape.
- The Tenant stated that there is water damage in the walls.

- The Tenant stated that the oven doesn't work, and stopped working approximately three weeks ago. He stated that he told the Landlord twice about it and the Landlord has not fixed it.

The Tenant failed to provide any documentary evidence to support the above claims regarding emergency repairs. The Tenant claimed that he has 300 photos and videos confirming the condition of the rental unit but did not provide them in evidence as he does not have a computer at home. stated that he believed the hearing would be in a court room and he would be able to show the judge the photos on his phone. He confirmed, however, that the amount he spent to deal with these issues did not amount to the \$3,300.00 outstanding in rent.

The Tenant stated that when the Landlord returned on May 8, 2018 he provided the Landlord with all the receipts for the work he has done to the rental unit.

The Tenant also claimed that he called the residential tenancy branch and the person with whom he spoke told him not to pay rent. He further stated that he was told by them not to pay rent as "everything was on hold until court".

In reply to the Tenant's submissions, the Landlord stated that the Tenant did not pay for emergency repairs as claimed and simply does not want to pay rent; as an example, he drew my attention to a copy of the following electronic communication between the parties:

Are you returning my deposit today, yes or no?
Deposit will be paid after moving out and paying all rents when suite returns in clean conditions.
Well then it will not be returned clean and undamaged. You also don't understand what's going on lol. No matter what happens in court, the WORST that can happen, is I will have to move, you will NEVER get the money.
I will also dispute the decision of it doesn't go in my favour which will mean once again, I can stay here until the next court date and do not have to pay you anything. JUST LIKE NOW lol.
That's fine tho, you're a narcissist and I will continue to prove that you have NO rights after what a negligent landlord you have been over this illegal suite.
The \$12,900+ that I've claimed, will be paid by YOU personally.
My offer has now expired so I'll see you in court 🍊☐

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

I find that the Tenant has not paid the outstanding rent or utilities as required by the residential tenancy agreement.

The Tenant alleges that he did not pay rent as he paid for emergency repairs; such repairs are dealt with in section 33 of the *Act*, which provides as follows:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (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, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The language in section is not discretionary. A repair must meet the definition in section 33(1) to be considered emergency. Further a Tenant will not be reimbursed for emergency repairs unless they follow the steps mandated by section 33(3).

The evidence before me does not satisfy me that the Tenant followed section 33(3) in terms of the claimed repairs. In any event, the Tenant confirmed that the amount he spent on the alleged repairs did not equal the outstanding rent of \$3,300.00.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. In this situation the Tenant had no authority under the *Act* to not pay rent. Although he alleges he paid for emergency repairs, he failed to provide evidence to support a finding that these repairs meet the definition set out in section 33, or that he followed the section as it relates to informing the Landlord of the required repairs as well as providing invoices of the claimed expenses.

I therefore find the Landlord has proven the reasons for issuing the Notice. The Tenant's application to cancel the Notice is dismissed. Similarly, the Tenant's Application for an Order that he be credited for the payment of emergency repairs against the outstanding rent is dismissed.

I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent as required by the residential tenancy agreement and section 26 of the *Act*. The Tenant's claim for compensation for emergency repairs as defined by section 33 of the *Act* as well as his claim for return of the filing fee is dismissed. .

The Landlord is granted an Order of Possession.

The Tenant's claim for monetary compensation pursuant to sections 38, 65(1) and 67 is dismissed with leave to reapply.

As the tenancy is ending the balance of the Tenant's claims are 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: July 12, 2018

Residential Tenancy Branch