

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR MNR OPR FF

Introduction

This hearing dealt with a cross - application by the tenant and landlord.

The landlord's application was for an order of possession for unpaid rent with an associated application for a monetary order and an order for recovery of the filing fee.

The tenant's application was to cancel the notice to end tenancy and recovery of the filing fee.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an order of possession?

Is the landlord entitled to the monetary amounts claimed?

Are the parties entitled to recovery of their respective filing fee?

Background and Evidence

The tenancy began on June 1, 2005. Rent in the amount of \$1725 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$800. The tenant failed to pay the entire amount due, withholding \$85 from the rent in the month of November 2008 and on November 7, 2008 the landlord served the tenant with a notice to end

tenancy for non-payment of rent. The tenant provided evidence that the monies withheld from the November rent was for emergency repairs for the supply and installation of an entry deadbolt along with the requisite costs for keys and labour to install the lockset. The tenant supplied a receipt in the amount of \$66.54 including all taxes for the material items of the work along with an accompanying invoice which reflected the reason for the new deadbolt and the total cost for the parts and the labour to supply and install the deadbolt in the amount of \$85. Both parties agreed that the tenant notified the landlord as to the needed repair to the lock and the landlord gave consent for the repairs to proceed. Evidence submitted by the applicant shows that the landlord offered to reimburse the tenant for the repair on November 6, 2008, after the tenant took it upon themselves to deduct the amount from the rent for November 1st 2008, but it was the testimony of both parties that there was difficult communication between the parties since the receipt for repairs was submitted to the landlord.

During the hearing, the landlord testified that he understood the tenants are entitled to reimbursement of monies which reflect the costs for emergency repairs and agreed that in this matter the repairs were required, but thought the cost for the repair was too high by \$42.48. In a letter to the tenants on November 6, 2008 the landlord outlined the emergency repair would be reimbursed at \$74.88 after taking into account the costs for materials and the labour associated with the repair. During the hearing the landlord subsequently adjusted his thoughts on the costs for the repair and testified the repairs were too high by only approximately \$13, and on actual calculation the difference was agreed to be \$10.12.

The tenant testified in their opinion the amount of \$85 they invoiced the landlord was fair in comparison to other estimates they submitted as evidence, and that they had already adjusted the total amount to only include the materials directly related to the repair and an amount of \$31.25 for obtaining and installing the deadbolt for which both parties agreed was reasonable.

Analysis

Based on the tenant's and landlord's testimony I find that the tenant made a necessary emergency repair as defined in s. 33(1)(d) of the Residential Tenancy Act (RTA) and complied with s. 33(5)(a) and (b) of the Residential Tenancy Act (RTA) by making a claim for reimbursement and giving the landlord an apt account of the emergency repair accompanied by a receipt. I find that the tenant's monetary amount claimed for reimbursement was made in good faith and it is apparent that because of communication issues with the landlord the tenant determined after a period of time to withhold the amount for repairs from the rent. The landlord objected to the cost as too high by approximately \$13 and determined to end the tenancy by serving the tenant with a notice to end tenancy for non-payment of rent. I find the notice to end tenancy to be a strong response for such a determination and coupled with s. 46(3) of the RTA:

s.46(3) A the notice to end tenancy has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent

I find the notice to end tenancy has no effect and the landlord is not entitled to an order of possession.

As for the monetary claims, I find the landlord is entitled to the difference between the amount which was deducted from the rent and the amount agreed by the parties to be the amount which on reflection is the more accurate amount. I find this amount to be \$10.12.

I find the landlord could have chosen a more productive and less disruptive route by which to resolve a minor matter and therefore dismiss the landlord's application for recovery of the filing fee.

I find the tenant could have applied more patience in their quest to recover the costs for the emergency repair, but also that they were compelled to file an application to counter the notice to end tenancy. Therefore I find the tenant is entitled to recover their filing fee of \$50.

Conclusion

I grant the tenant \$50 for their filing fee and deduct from it the amount of \$10.12 due to the landlord and order the tenant can withhold the amount of \$39.88 from the January 2009 portion of the rent.

Dated: December 1, 2009