

Dispute Resolution Services

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

Decision

Dispute Codes: CNR LRE MNDC MNR OPR FF

Introduction

This is a cross-application by the tenant and the landlord.

The tenant's application is to cancel a notice for unpaid rent issued by the landlord on December 05, 2008. The application seeks a monetary order for damages or losses dating back to over one year for, primarily, for the loss of use of the living room, and some damage to 3 items of the tenant, due to a water leak into the rental unit in January 2008. In addition, the tenant seeks to set conditions on the landlord's right to enter the rental unit, following a reported break and enter incident by the landlord's daughter and another young female, during the landlord's absence.

The landlord's application seeks an order of possession for unpaid rent for the months of October, November and December 2008, a monetary order for the unpaid rent in the amount of \$2230, and inclusive of the filing fee of \$50 for making this application.

Both parties were represented in the hearing and supplied testimony under solemn affirmation.

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?

Is the tenant entitled to the monetary amounts claimed?

Should the right of the landlord to enter the rental unit be suspended or made conditional?

Background and Evidence

Since the outset of the tenancy the rent in the amount of \$750 is payable in advance on the first day of each month. The landlord has never collected a security deposit from the tenant. According to the landlord the tenant failed to pay rent in the months of October, November and December 2008 and on December 05, 2008 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant outright dismissed the landlord's claim testifying that there is no unpaid rent, and that she is precluded from proving she has paid all the rent as per the landlord's refusal to issue receipts for rent paid in cash by the tenant. The landlord concurred that he is unable to prove arrears in rent due to the same reason of not issuing receipts.

The landlord determined to issue a notice to end tenancy reportedly in response to a letter from the tenant dated December 02, 2008 stating that she was unilaterally deducting rent, retroactive to January 2008, in amounts totalling \$2408.63; and primarily at, "\$150 a month starting from January 2008 until the repairs are done" : referencing a water leak into the rental unit which occurred in January 2008, and some property damage resulting from the leak. In the same letter, the tenant goes on to indicate that this deduction will be satisfied in full when, and once it is balanced off against the landlord's claim of arrears in rent.

In respect to the reference of a water leak, the facts before me via testimony of both parties are that the water leak first appeared in January 2008. There is a difference in accounts by the parties. The tenant's account is that the landlord initially ignored the concerns of a leak. The landlord's account is that he attended to the cause of the water leak soon after the problem was brought to his attention by the tenant. Regardless, the problem is described by the landlord as a redirection of water from the roof, down into the rental unit. The water affected a contained area of the rental unit approximately two (2) square meters and some water persisted in this area until the leak fully abated some time later. The tenant claims to have mould in the area influenced by the water leak and in her opinion the entire matter of the water seepage has exasperated some health and medical issues for her over the past year. The tenant claims that an unfortunate lack of communication and personal issues between herself and the landlord have, to date, prevented her from allowing the landlord to fully remedy the damage caused by the

water seepage of last winter. The tenant lacks confidence and trust in the landlord due to a myriad of reasons, which include some personal health issues and her dissatisfaction with the landlord's lack of attention to her concerns in general.

Conversely, The landlord testified that he has been ready and willing to attend to the tenant's concerns and need for repairs related to the water leak for some time, since last spring, but that the tenant has not allowed him to proceed. He also testified that subsequent to the repairs he made to the source of the leak last winter, he was not made aware that issues related to the initial water seepage persisted sufficiently to bother the tenant to the extent she claims and he could not remedy that of which he was not aware.

In spite of the gross discrepancies in the testimony, during the course of the hearing, the parties reached agreement to settle some matters, with the following conditions:

1. the landlord desires to attend to the necessary repairs to the water damaged wall and carpet area of the rental unit as soon as January 23-25, inclusive. The tenant is agreeable to the work being done on these dates provided she is not in the rental unit during the work being done, due to personal health issues and her issues with the landlord, and on the landlord's promise to not enter other parts of the rental unit in her absence.
2. all communication in respect to the repairs and timing of the repairs will be vetted by the tenant's support person, and to this end contact information was exchanged between her and the landlord.
3. from the rent for January 2009 onward, the tenant will only pay rent with a money order and ensure a receipt is associated with all rent submissions from hereon.

Towards satisfaction of the first point of agreement the landlord testified that the work will be performed during the daytime hours. The tenant testified that she will be forced to pay for accommodations for the nights of January 22, 23 and 24, 2009 so as to allow the work to be completed during the daytime hours on the 23, 24, and 25.

The tenant has made an additional claim associated with the aforementioned water leak for the replacement cost of 3 items reportedly damaged by the water which entered her rental unit to a total, inclusive of tax, of \$358.63. The tenant did not disclose that she had content insurance to cover these items, but had requested the landlord to make a

claim for these items on his home insurance which he did not accept was something he could do.

Lastly, the tenant explained that because the landlord's daughter was involved in gaining illegal entry into her rental unit, she was seeking to deny the landlord any right to enter her unit. Her testimony was that since the landlord's children are his responsibility he also cannot be trusted that he will only enter her rental unit under proper authority in compliance with the Residential Tenancy Act. After some discussion as to the landlord's right to enter the rental unit and that a landlord's right to enter a rental unit already having restrictions under section 29 of the Residential Tenancy Act the tenant was satisfied with simply assuring reimbursement by the landlord for a door security chain.

Analysis

It is evident from the copy of the notice to end tenancy that the notice itself given by the landlord is not in the approved form. The form is dated October 2000, and the form's wording is misleading, its references of statutes within the Residential Tenancy Act are in error, and the form contains dated procedural instructions. **Section 52** of the Residential Tenancy Act titled **Form and Content to end tenancy**, and specifically subsection (e) states as follows:

Sec 52 In order to be effective a notice to end tenancy must be in writing and must (e) when given by a landlord, be in the approved form.

I find that the Notice to End Tenancy is not valid. Therefore, the Notice to End Tenancy is cancelled. The landlord is not entitled to an order of possession as requested with the effect that the tenancy will continue.

There is stark contrast in the testimony of the parties and I cannot formulate a preference for one over the other. But from the lack of evidence before me, namely receipts, I find I am prevented from making a determination of whether there are, or there are not, arrears in rent. For this reason, the landlord is not entitled to the monetary amounts claimed, and neither is the tenant entitled to offset any arrears or to a return of any rent reportedly fully paid in satisfaction of her claim.

I find the tenant and landlord both contributed to delaying an expeditious resolve to all the issues arising from the water leak. The tenant states she gave up on the landlord

helping her, and it seems reasonable the tenant would have benefited from follow-up inspections by the landlord after the early and initial repairs of the water leak. However, it is acknowledged that circumstances existed between the parties which mitigated productive communication and a thorough resolve to the issues in this hearing.

I find that in the absence of any proof that neglect on the landlord's part contributed to the water leak, the landlord cannot be held liable for damage to the tenant's items damaged by the water leak and for which the tenant may seek redress from any applicable tenant or content insurance.

I find the tenant is entitled to reimbursement for the cost of a door security chain.

I find that as part of the landlord's responsibility to remedy the damages to the rental unit, including the use of chemicals and introducing particulate dust into the rental unit, the landlord is responsible to at least partially pay for temporary relocation of the tenant until the repairs are completed, as per their agreement.

Conclusion

I order the landlord to perform repairs on **January 23 – 25, 2009** to the rental unit, of damage, deterioration or contamination to that part of the rental unit affected or influenced by the water leak which is the subject of today's hearing. As per the agreement between the tenant and the landlord, these repairs can be at a different time as mutually agreed by the parties.

I order that the tenant is entitled to deduct from the rent for February 2009, an amount no greater than **\$300** if accompanied by a receipt for accommodations for the purpose of facilitating repairs to her rental unit.

I order the tenant is permitted to deduct **\$5.00** from the rent for February 2009 for the cost of a door security chain.

Dated: January 14, 2009