



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, OLC, ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for unpaid rent, for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, for an order to force the landlord to carry out emergency repairs and other repairs and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the landlord by registered post on April 11, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. A significant amount of written and photographic evidence has been submitted prior to the hearing. I have thoroughly reviewed all submissions.

Issues(s) to be Decided

- Whether the landlord is entitled to end the tenancy for unpaid rent?
- Are there arrears of rent and if so, how much?
- Are emergency or other repairs necessary?
- Has there been a breach of Section 32 of the *Residential Tenancy Act* by the landlord?
- Is the tenant entitled to an order for the landlord to repair the rental unit?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on July 01, 1998. Rent is \$925.00 per month payable on the 1st of each month. The tenant paid a security deposit of \$355.00 on July 01, 1998. The tenant was served a 10 Day Notice to End Tenancy for unpaid rent on April 08, 2009. The landlord claim the amount of rent outstanding for April 01, 2009 is \$68.75.

The tenant testifies that she had a verbal agreement with the landlord that she would deduct amounts from her rent to cover the cost of some minor repairs she completed in the rental unit. At the outset of the tenancy the tenant claimed that she had rented the suite 'as seen' and was aware of repair and decoration work that was required to be completed. The tenant has lived in the suite for 11 years. When she moved in she repainted the suite. The tenant testifies that she sent the landlord a letter requesting permission to paint the suite again. She purchased the paint and deducted the amount from the rent. The landlord did not dispute this deduction. The tenant testifies that over the years the suite needed to be repainted and she again bought some paint to do this and deducted the cost from the rent for April, 2009 of \$68.75. It was at this point that the landlord issued the tenant with a Notice to End tenancy for unpaid rent.

The tenant testifies that the landlord has not carried out repairs to the rental unit which she has had to pay for and some which she has asked the landlord to do. These repairs have not been completed in a timely manner. The landlord replaced the faucets at the kitchen sink but these continue to leak. The sink continues to leak and the tenant has a jug under the sink to catch the water. Some tiles in the bathroom had come away. This has caused damage to the wall and sub-floor in adjacent bedroom. The tenant and landlord shared the cost of repairing the sub-floor and dry wall. However, the bathroom tiles continue to need repair work and the tenant has asked the landlord in writing on

different occasions to carry out the work. The tenant testifies that the landlord has asked her to put water proof tape on the tiles to prevent them leaking again until he can re-grout them. This has been on going for two to three months.

The tenant testifies that she had had to replace the filters in the furnace as the landlord has not serviced this for many years. The tenant testifies that she has deducted these costs from the rent and the landlord has not disputed this in the past.

The tenant testifies that the rental unit has a rodent problem. She notified the landlord who said he would deal with it by putting some poison down but this has not been rectified three months after he was notified. The tenant has pulled out her freezer and found a mouse hole and droppings. There are also droppings on her kitchen counter tops and in the lower kitchen cupboards. The tenant can not put food in the lower cupboards because of the mice.

The tenant testifies that there have been other repairs that required the landlords attention some of which he has done and some she has rectified herself and do not form part of this claim. The tenant has provided copies of letters she has sent the landlord requesting him to carry out repair work on the rental unit and notifying him about the rodent problem. These letters are dated over five months in 2007, June, 2008 and March and April, 2009.

The landlord testifies that when the tenant has deducted small amounts in the past from her rent he has not disputed this. The landlord states there is a paragraph in the tenancy agreement which says the tenant must get permission from the landlord to paint the rental unit and that the tenant has not complied with this. The landlord testifies that he has serviced the furnace twice a year. The landlord testifies about damage

caused to the rental unit by the tenant and her children which is her responsibility to repair. The tenant does not dispute this.

The landlord testifies that the outside area of the rental unit needs to be cleaned and tidied before he can tackle the rodent problem.

Analysis

I find that the landlord has not completed repairs to the rental unit in a timely manner pursuant to s. 32 of the *Residential Tenancy Act*:

A landlord must provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. In the same vein the tenant is also responsible for the rental unit and must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or persons permitted on the residential property by the tenant.

With this in mind; **I Order the landlord** to complete repairs to the rental unit consisting of repairs to the tiles in the bathroom, the taps in the kitchen, the leak under the kitchen sink and the rodent infestation throughout the whole rental unit. No further Order will be issued to this effect.

"*tenancy agreement*" means an agreement, whether written or oral, express or implied, between a landlord and a tenant. I find that as the tenant has deducted rent in the past for repairs or decoration she has completed she is entitled to recover the costs of the paint for the rental unit as per the verbal agreement implied between them. I

recommend that the landlord and tenant amend the tenancy agreement to make it clear in the future what, if anything can be deducted from rent for repairs to the rental unit, pursuant to s. 14(2) of the *Act*.

I Order the tenant to ensure that areas of the yard are cleared of any rubbish or personal effects that belong to them to allow the landlord opportunity to overcome the rodent infestation, pursuant to s. 32(2) of the *Act*. No further Order will be issued to this effect.

The landlord served the tenant with a 10 Day Notice on a form that is no longer in use. Section 52 of the *Act* says that when a landlord serves a Notice it must be on an approved form. I find that the landlord's Notice substantially complies with s. 52 of the *Act* and has not prejudiced the tenant. Consequently, I find that the landlord's Notice is not invalid because it is not on the currently used form. However, the landlord would be well advised to use the most current form in the future as failure to do so could prejudice a tenant if they rely on incorrect information contained in it.

Due to the extreme length of time the landlord has taken to carry out repairs and due to the fact that he has allowed the tenant to deduct sums of money from the rent in the past to pay for repairs or decoration I find that the 10 Day Notice to End Tenancy is overturned and the tenancy can continue.

Conclusion

The tenant's application is successful. The 10 Day Notice to End Tenancy for unpaid rent dated, April 08, 2009 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her **\$50.00** filing



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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: May 19, 2009.

Dispute Resolution Officer