



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNDC, CNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for rent owed and damages, pursuant to Section 67;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

Preliminary Matter:

The tenant's application was filed on December 10, 2009 seeking an order to cancel a Ten-Day Notice to End Tenancy issued by the landlord dated December 1, 2009, claiming rental arrears of \$400.00 for December rent due on December 1, 2009. However, the landlord stated that, after he became aware that the original Ten-Day Notice of December 1, 2009 was not compliant with the Act, he then decided to issue a second Ten-Day Notice on December 24, 2009 also relating to rent owed for December 2009. This occurred after the tenant had already applied for dispute resolution to cancel the original December 1, 2009 notice. The landlord then proceeded to apply for dispute resolution on January 4, 2010 seeking \$1,750.00 in rental arrears and an order of

possession based on the second notice dated December 24, 2009.

The earlier Ten-Day Notice was defunct from the date of its issue and the tenant, being unaware of that fact, had acted with the intention of disputing this Notice which purported to end the tenancy for rent owed in December 2009. As the original December 1, 2009 notice was no longer at issue, I found that a determination must be made as to whether the tenant's application could be amended to dispute the notice of December 24, 2009 instead. I found that permitting an amendment would not prejudice the landlord, who was already aware that the tenant disputed the Notice which was also based on rent owed for December. In the interest of administrative fairness and natural justice, the tenant was therefore permitted to amend the application to address the Ten-Day Notice dated December 24, 2009.

Accordingly, the hearing was to deal with the landlord's application to enforce the December 24, 2009 Notice and the tenant's application to cancel the Notice.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession for unpaid rent? In order to answer this question it must be determined:
 - Was a 10-Day notice to End Tenancy properly served on the tenant?
 - Was there any outstanding rent owed to the landlord by the tenant at the time the Ten-Day Notice to End Tenancy was issued and served?
 - Did the tenant fail to pay the rental arrears within 5 days of receiving the Notice to End Tenancy?
- Has the Landlord established entitlement to compensation for rent still owed?

Issues to be decided: Tenant's Application

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

- Is the tenant owed compensation by the landlord for repair and renovation work performed on the property?

Background and Evidence

Based on the testimony of the landlord, the tenancy began in June 2009. However, the tenant was adamant that the tenancy began at the end of July 2009. There was no written tenancy agreement. The parties agreed that the rent was set at \$400.00 per month and included all utilities and some furnishings in the common areas. No security deposit was paid.

The landlord testified that the rent was due on the first day of the month but rent was never paid, except for \$400.00 received for the month of August 2009. According to the landlord, the tenant failed to pay rent of \$150.00 for July, \$400.00 for September 2009, \$400.00 for October 2009, \$400.00 for November 2009 and \$400.00 for December 2009. The landlord testified that the tenant has also neglected to pay \$400.00 rent for January 2010. The total amount of the monetary claim including January's rent was \$2,150.00.

The tenant disputed that any rent was owed on the basis that the landlord had offered, as part of the tenancy, to credit the tenant with free rent in exchange for work done on the unit. The tenant testified that a significant amount of renovation work had been completed inside the unit and in preparing for installation of a fence on the property. The tenant supplied photographic evidence showing the "before and after" condition of the unit to support this contention. The tenant testified that the landlord had also refused to pay for some of the materials and supplies, such as chain-link fencing, that was provided by the tenant. The tenant testified that the landlord had accepted the fencing and had since removed it from the premises without reimbursing for the cost. The tenant's testimony was that the amounts owed to the tenant for all of the work and materials far exceeded the amount of rent now being claimed as "arrears" by the landlord. The tenant testified that the landlord's attempt to end the tenancy and evict the tenant was purely for financial gain to benefit from all of the tenant's work without paying or crediting the tenant. The tenant also alleged that the landlord had entered the unit without notice, then removed flooring and furnishings in the common area that were

part of the tenancy and interfered with the tenant's guests. The tenant supplied photos in evidence showing the discarded sofa and carpeting.

The landlord disputed that any agreement was ever made to allow the tenant to reduce rent for labour or materials. However, the landlord acknowledged that the tenant had painted some rooms for an agreed-upon price of \$300.00. The landlord stated that there was no contract to document this arrangement but took the position that it was not a part of the tenancy. The landlord admitted that he did not pay the \$300.00 owed to the tenant for the work nor was the landlord's monetary claim in the application reduced by this debt. The landlord also disputed that the tenant was required, as part of the tenancy agreement, to do any work to prepare for the fence and rejected the testimony of the tenant that fencing was ever supplied to the landlord. The landlord testified that he and the tenant had also made a side agreement for the tenant to do the labour in replacing flooring in the unit for a flat fee of \$300.00. However, this job was never done and the landlord is no longer interested in pursuing this arrangement. In regards to why the landlord had not taken action to demand the rental arrears during the past 5 months, the landlord said that he had received repeated promises from the tenant that rent was forthcoming.

Analysis: Ten-Day Notice

I find that the question of whether or not the Ten-Day Notice was valid turns on whether or not rent was owed to the landlord. The question of whether or not rent was owed is contingent upon what terms were agreed upon in the tenancy agreement. If I find that the tenancy agreement included a term whereby the tenant would perform work in lieu of rent, and if the tenant could prove that the work was done for the value of the rent, then this would affect the amount of the arrears, if any, and may affect the validity of the Ten-Day Notice. Unfortunately, the tenancy agreement in this case only consisted of verbal terms.

Section 13 of the Act requires that a landlord prepare in writing every tenancy agreement entered into and within 21 days after that the landlord must give the tenant a copy of the agreement. The Act also specifies that a tenancy agreement must comply with the Act and regulations and set out standard terms as well as:

- the correct legal names of the landlord and tenant;
- the address of the rental unit;
- the date the agreement was entered into and that the tenancy starts;
- the phone number and address for service of the landlord or agent;
- the agreed terms for whether it is a fixed term or periodic tenancy
- the amount of rent payable and whether it rent varies with the number of occupants
- what day in the period that the rent is due;
- which services and facilities are included in the rent;
- the amount of any security deposit or pet damage deposit and the amount it was or must be paid.

In this instance, I find that the landlord did not comply with the Act by failing to prepare a written agreement with the above required terms and instead now seeks to rely on an oral contract with disputed verbal terms.

According to the Act, the terms contained in verbal tenancy agreements may still be recognized and enforced. Section 1 of the Act, defines “tenancy agreement” as follows:

***"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;*

On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are disputing what was originally agreed-upon, as in the case before me, then the terms become unclear and will not be enforced. I find that verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve conflicts that arise.

Moreover, where: a) there is no written tenancy agreement; b) the agreement is missing key provisions, or; c) the terms in an agreement do not comply with the Act - then a Dispute Resolution Officer will have no choice but to base deliberations on provisions contained in the Residential Tenancy Act by default and not on the purported verbal agreement under dispute.

Given the testimony and evidence of both parties, I find that the value of the rent was set at \$400.00, but I am unable to determine what other terms applied in regards to compensating the tenant for the renovation work that was done and by what amount, if any, the tenant is in arrears.

Given the above, I find that the Ten-Day Notice cannot be enforced and must be cancelled. In regards to the enforceable terms of this tenancy I find that the following terms will be applicable to this tenancy:

- Rent is set at \$400.00 per month and must be paid on the first day of the month starting on February 1, 2010.
- No past rental arrears are currently owed by the tenant.
- No past debt or other monies are currently owed to the tenant by the landlord.
- The tenancy agreement does not include any term, as part of the tenancy that permits work to be done in lieu of rent owed
- All other applicable provisions of the Residential Tenancy Act will govern this tenancy.

Conclusion

I hereby grant tenant's application to cancel the Ten-Day Notice dated December 1, 2009 and to cancel the Ten-Day Notice dated December 24, 2009. I order that both of these notices are of no force nor effect.

I order that the tenancy will continue with monthly rent set at \$400.00 payable on the first day of each month.

I hereby dismiss the landlord's claim in its entirety without leave to reapply.

Dated: January 2010

Dispute Resolution Officer