



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, MNDC, MNSD, CNR, OLC, RR, 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 \$1,150.00 rent owed for January 2010, \$1,150.00 loss of rent for February and \$100.00 damages, pursuant to Section 67;
- An order to retain all or part of the security deposit pursuant to Section 38;
- 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;
- Order that the landlord comply with the Act or Agreement
- Order that the tenant is entitled to a rent abatement for services and facilities promised but not provided.
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

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.

At the outset of the hearing, the parties advised that the tenancy had ended and the tenants had moved out on January 31, 2010 pursuant to the 10-Day Notice to End Tenancy, purporting to be effective on January 10, 2010. Therefore the tenant was no longer seeking to cancel the Ten-Day Notice to End Tenancy for Unpaid Rent and the

landlord was no longer seeking an Order of Possession and only the monetary claims by both parties were left to be determined.

Landlord's Application: Issues to be decided:

- Has the landlord established monetary entitlement to compensation for rental arrears, loss of rent and damages?
- Is the landlord entitled to retain the security deposit in partial satisfaction of the monetary claim?

Landlord's Application: Issues to be decided

- Has the tenant established that a rent abatement was warranted by the fact that promised repairs and improvements were not completed?

Preliminary Issue

Each party received the Notice of Hearing Package and Applications for Dispute Resolution for the other. However, the tenant testified that they did not receive the landlord's evidence submitted later and the landlord testified that she had never received the tenant's evidence that was submitted later.

The Residential Tenancy Rules of Procedure, Rule 3 requires that the Applicant must serve all evidence on the respondent and to the dispute resolution file. Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all evidence to be relied upon must also be served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the Dispute Resolution Officer must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice. Even if the Dispute Resolution Officer decided to accept the evidence, the other party must still be given an opportunity to review the unseen evidence before the application can be heard and this would require an adjournment to complete. Therefore a determination about whether or not the matter should be adjourned to a future date to allow service of the evidence would have to be rendered.

In the case before me, both parties had submitted their evidence to the Dispute Resolution file but, according to the testimony, not to the other party.

Given the above, I decline to accept or consider any evidence that may not have been properly served on the other party. However, I will still consider verbal testimony from both parties.

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in November 2009 with rent set at \$1,150.00 and a deposit of \$575.00 paid.

The landlord testified that the tenant failed to pay rent on January 2, 2010 and a Notice was issued. The landlord stated that the tenant remained in the unit until the end of January and then vacated and is therefore claiming \$1,150.00 rent owed for January 2010. The landlord stated that a loss of \$1,150.00 rent was incurred for February 2010 as well because the landlord did not know whether the tenant would move out. The landlord testified that the tenant had removed a chandelier for which the landlord incurred a cost of \$100.00. No evidence of the damage nor the costs was submitted.

The tenant testified that when the move-in inspection was done, there were certain areas of the rental unit that were unfinished landlord and the inspection report specifically stated that these were to be done.

The tenant was seeking a rent abatement based on the fact that the landlord did not complete the promised improvements including failure to fix a hole left by the plumber, uninstalled doors, non-functional fireplace, unfinished windows, missing baseboard and other deficiencies. The tenant stated that the landlord's failure to comply with the agreement and refusal to follow the Act in regards to the repairs and refusal to accept rent resulted in a devalued tenancy as well as the costs and inconvenience of relocating the family.

The Landlord acknowledged that there was some plumbing to do, baseboards, doors and other tasks and attempts were made to fulfill the commitment. The landlord testified that she asked the tenant to let them know when it would be a good time to complete the remainder of the work . According to the landlord, an arrangement was

made to install some of the baseboards and during the process, the tenant allowed the children to get underfoot. However, subsequent to that incident the tenant failed to contact the landlord to arrange a time for the rest of the repairs. Therefore, as far as the landlord was concerned the promised repairs were not completed because of the tenant's neglect in advising of an appropriate time.

A mediated discussion ensued and the parties agreed that the landlord would retain the tenant's security deposit of \$575.00 and that the tenant would pay for the remainder of rent owed for the month of January 2010 in the amount of \$575.00.

Conclusion

I find that the landlord has established total entitlement in the amount of \$1,150.00. I order that the landlord retain the security deposit and interest of \$575.00 in partial satisfaction of the claim leaving a balance due of \$575.00. I find that the tenant is entitled to be reimbursed for the \$50.00 fee paid by the tenants for the tenant's application and deduct this amount from the landlord's monetary entitlement. I hereby issue a monetary order under section 67 of the *Act* for \$525.00 in favour of the landlord. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the landlord's application and the remainder of the tenant's application are both dismissed, without leave to reapply.

Dated: February 2010

Dispute Resolution Officer