

## **Decision**

### **Dispute Codes:**

CNR, RR, OPR, MNR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated January 1, 2010 and effective January 11, 2009 , and application to reduce the rent for repairs, services and facilities and to order the landlord to make repairs to the unit.

The hearing was also convened to hear a cross application by the landlord seeking an Order of Possession, monetary compensation for rent owed and to keep the security deposit in partial satisfaction of the claim.

At the outset of the hearing, the parties advised that the tenancy had ended, so an order of possession was no longer at issue.

Both the landlord and the tenant appeared and each gave testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted.
- Whether the tenant is entitled to a rent reduction for repairs or services not provided
- Whether the landlord should be ordered to complete repairs
- Whether the landlord is entitled to monetary compensation for rent owed and unpaid.

## **Background and Evidence**

The tenancy began in March 2009 with rent set at \$1,250.00 and a deposit of \$625.00 was paid.

The landlord testified that on January 1, 2010, the tenant did not pay the \$1,250.00 rent owed and instead only paid \$288.00. The landlord testified that a letter dated December 15, 2009 had previously been received from the tenant through her lawyer informing the landlord that the tenant was ending the tenancy on January 31, 2010. The letter stated that the tenant would not be paying the full rent, due to deductions of \$268.80 for the "fireplace repair", a refund of the security deposit of \$625.00 and 6 months interest on the security deposit in the amount of \$68.20. In response to the letter from the tenant and the tenant's failure to pay the full rent owed for the month of January 2010, the landlord issued a Ten-Day Notice to End Tenancy with an effective date of January 11, 2010 and a demand for payment of \$962.00.

The landlord testified that during the tenancy the tenant never reported any damage to the fireplace and did not have the landlord's authorization to pay for repairs nor to deduct the \$268.80 costs from her rent. According to the landlord, any damage to the fireplace remote, which was replaced by the tenant, was caused by the tenant. The landlord testified that, in any case, since the problem was never reported, the landlord was deprived of the opportunity to handle the problem in a more economical way. The landlord testified that they were not prepared to incur unnecessary and unexpected costs because of the tenant's decision to go ahead and order a replacement fireplace control without the landlord's knowledge or permission. The landlord is now seeking monetary compensation for the \$962.00 rent owed.

The tenant testified that after moving in on March 1, 2009, she did not have any reason to notice the fireplace remote control and it was not until Autumn 2009 that she discovered that it had been melted and was not functional. The tenant denied that she

had anything to do with damaging the remote control. The tenant acknowledged that she chose not to report the repair issue to the landlord and did not let the landlord know about the problem until after-the-fact. The tenant had sought advice from professionals on her own and was told that the unit had to be replaced. This was done at a cost of \$268.80, which the tenant paid for and later deducted from her rent for January 2010 on the advice of her lawyer. The tenant also reduced her January rent by a further \$693.20 representing her security deposit of \$625.00 and interest of \$68.20. The tenant pointed out that she had made sure that the invoice was made out to the landlord's address. A copy of the invoice was submitted into evidence. The tenant stated that she had also left the new remote in the unit for the landlord. The tenant felt that she should not incur the cost of an item that was left to benefit the landlord.

A substantial amount of evidence was submitted including copy of the tenancy agreement, photos and copies of communications.

#### Analysis – Notice to End Tenancy

Given the testimony of the parties, I find that the tenant did not pay the rent when rent was due and did not have a valid reason under the Act not to pay the rent, even if there was a problem with the unit.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. A tenant cannot withhold rent for repairs except in very specific serious emergency situations.

Section 33 of the Act allows a tenant to deduct the cost of urgent repairs that the tenant paid out-of-pocket to address an emergency. However, the tenant would need to prove that it related to a genuine emergency such as a burst water pipe, and the tenant had made at least 2 urgent attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs. The tenant

must then prove that, following those attempts, the tenant gave the landlord reasonable time to make the repairs. In this instance, I find that there was not an emergency and that the tenant did not follow the Act in regards to arranging the repairs. In fact I find that the tenant withheld the rent in violation of the Act and the landlord is entitled to the rental arrears of \$962.00 withheld in violation of the Act.

In regards to the tenant's claim for rent reduction or rent abatement for repairs or services not provided, I find that this claim is completely without merit and that this portion of the tenant's application must be dismissed without leave.

Because the tenancy has already ended, I find that the portion of the tenant's application requesting an order for repairs must also be dismissed without leave.

### **Conclusion**

Based on the testimony and evidence discussed above, I find that the landlord is entitled to monetary compensation of \$1,012.00 comprised of \$962.00 for rental arrears and the \$50.00 paid for this application. I order that the landlord retain the tenant's security deposit of \$625.00 in partial satisfaction of the claim leaving a balance due of \$387.00.

I hereby issue a monetary order in favour of the landlord in the amount of \$387.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply.

February 2010

Date of Decision

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Dispute Resolution Officer