



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNR, CNR, RR, OLC, RP, LRE, 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, pursuant to Section 67;

The tenant applied for the following:

- An order to cancel the Notice to End Tenancy For Unpaid Rent
- An order to compel the landlord to comply with the Act
- An order to compel the landlord to make repairs
- An order to compel the landlord to make emergency repairs
- An order to reimburse the tenant for emergency repairs made
- An order to allow the tenant to reduce rent for repairs, services or facilities agreed upon, but not provided
- An order to suspend or set conditions on the landlord's right to enter
- Reimbursement for the cost of filing

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.

Issues to be decided: Landlord's Application

- Is the landlord entitled to an order of possession for unpaid rent?
- Has the Landlord established monetary entitlement to compensation for rental arrears still outstanding?

Issues to be decided: Tenant's Application

- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?
- Has the tenant proven entitlement to a rent reduction for the damage and losses for which the landlord is responsible under the Act?
- Is the tenant entitled to be reimbursed for expenses for emergency repairs done by the tenant?
- Should the landlord be ordered to complete repairs or emergency repairs for health and safety reasons?
- Should the landlord be ordered to comply with the Act?
- Is the tenant entitled to be granted an order restricting the landlord's access to the unit?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started in October 2009 with rent set at \$850.00 and the tenant had paid \$425.00 security deposit. A hand-written tenancy agreement was submitted into evidence. The landlord testified that the tenant did not pay \$150.00 of the rent for December 2009 and failed to pay \$850.00 for January 2010 and a Ten-Day Notice was issued on January 6, 2010 and served on the tenant in person. The landlord testified that the tenant then failed to pay \$850.00 for February 2010. The total amount owed, according to the landlord is \$1,850. However the landlord was also claiming \$850.00 anticipated loss of rent for the month of March 2010.

A copy of the Notice was in evidence showing that the landlord was demanding \$1,000.00 in rental arrears.

The tenant testified that he had withheld \$150.00 of the rent for December 2009. The tenant testified that this was on agreement by the landlord to compensate for a leak in the ceiling and other problems. In regards to rent owed for January 2010, the tenant testified that the landlord declined a cheque, and neglected to issue receipts for any cash paid. The tenant testified that the copies of the receipts that were submitted into evidence by the landlord were only created for the purpose of the hearing. The tenant testified that he had made a partial payment of rent for January 2010 in the amount of \$350.00 in cash, but that the landlord did not issue a receipt and refused to accept a cheque for the remaining \$500.00. The tenant's position was that he only owed \$500.00 for January 2010 and was willing to pay but the landlord would not accept payment. The tenant also acknowledged that he did not pay \$850.00 owed for February 2010 due to concerns about no receipts. The tenant testified that the landlord had illegally entered his suite at will and had served the Ten-Day Notice in this manner. The tenant stated that it was not fair to end his tenancy when it was the landlord's fault for not accepting cheques from the tenant.

In regards to the tenant's claim for reimbursement for emergency repairs and request for an order to compel the landlord to repair the unit, the tenant stated that there were serious deficiencies in the suite including a leak from plumbing above that damaged the ceiling. The leak was fixed, but the ceiling remained unsightly. The tenant added that there were security problems with the entry door. The tenant testified that there was also mould in the unit and some serious electrical issues. In fact, the municipality considered the unit to be an illegal suite. The tenant had submitted photographic evidence showing some of the problems in the suite. The tenant testified that his request for monetary compensation was based on the estimated the cost of the repairs. The tenant pointed out that the landlord had violated numerous sections of the Act, including those relating to maintaining a suite in a condition that would meet health and safety standards, the requirement to issue a receipt for cash paid, the obligation to address emergency repairs and the requirement not to enter the suite without adequate notice under the Act. The tenant stated that, in addition to the above, the landlord had

violated the Act by failing to do proper paperwork such as the move-in inspection report and a standard written tenancy agreement. The tenant acknowledged that these violations did not necessarily warrant monetary compensation, but he felt that the landlord's conduct and persistent noncompliance with the legislation should not be allowed to go on. The tenant's position was that he should not be penalized for taking steps to challenge the landlord's wanton failure to follow the Act.

The landlord disputed the allegations by the tenant. The landlord's position was that receipts were issued, that payment was not refused, that maintenance was adequate and that the landlord had not illegally entered the suite.

Analysis: End of Tenancy

The landlord was seeking an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated January 6, 2010. The tenant's application is requesting that the notice be cancelled.

Section 26(1) of the Act states 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 the Act to deduct all or a portion of the rent.

I find that the Ten-Day Notice received by the tenant on January 6, 2010 included specific instructions on the second page warning that the tenant is not entitled to withhold rent. In fact, there is no provision under the Act that would allow a tenant to withhold rent under the circumstances applicable to this situation.

While section 33 of the Act seems to indicate that a tenant may withhold rent to reimburse for emergency expenses incurred by the tenant, this provision only deals with situations where emergency repairs are required and the landlord has repeatedly refused to fix the problem. Section 33 refers to repairs that are, urgent, necessary for the health or safety or for the preservation or use of residential property, including the primary heating system, roofing, plumbing or infrastructure. A tenant may have emergency repairs made but only when all of the following conditions are met:

- 1.) It must be an urgent emergency repair;

- 2.) the tenant has made at least two attempts to contact the landlord for the emergency repairs and;
- 3.) the tenant has given the landlord reasonable time to make the repairs.

If all of the above is followed, a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement and gives the landlord a written account accompanied by a receipt for each amount claimed. However, any amount claimed by a tenant where it is found that the tenant made the repairs *before* one or more of the above conditions were met, would not qualify. Once all of the above conditions are met and if the landlord still fails to reimburse a tenant as required, the tenant may then deduct the amount spent on emergency repairs from rent.

In this instance, I find that the landlord addressed the water leak without significant delay and the residual ceiling repairs would not be considered as an “emergency”. I find that the tenant did not meet the conditions under section 33 and was not entitled to unilaterally reduce or withhold rent.

In regards to the tenant’s claim that the rent abatement of \$150.00 was based on a mutual agreement, I find that the landlord had disputed that any verbal agreement was reached and there was nothing in writing to verify the agreement.

In any case, whether or not the \$150.00 was still owed for December 2009, I note that rental arrears for January and February 2010 accrued. The tenant’s testimony that \$350.00 was paid in cash, does not relieve the tenant from paying the remainder of \$500.00 for January and this would justify the notice. I find that there was also non-payment of February rent.

In regards to the other reason given for failure to pay rent, which the tenant attributed to the landlord’s refusal to accept payment, I find that a landlord is not required to accept cheques from a tenant. I find that the tenant’s concern about receipts not being issued for cash could have been remedied by payment through a money order with the tenant retaining the receipt portion as proof of payment. The tenant would then be at liberty to make an application for dispute resolution seeking an order that the landlord comply with the Act by issuing receipts and this action would not have placed his tenancy in

jeopardy as has the withholding of rent.

Based on the testimony and evidence of both parties, I find that on January 6, 2010, the tenant was genuinely in arrears for rent owed to the landlord and had 5 days to pay the arrears to cancel the Notice, which was not done.

As it has been determined that the tenant did not have a right to deduct any portion of the rent and was served with a valid Notice to End Tenancy for Unpaid Rent, I find that the landlord is entitled to an Order of Possession under the Act. The portion of the tenant's application relating to the request for an order to cancel the Ten-Day Notice is hereby dismissed without leave to reapply.

Analysis – Landlord's Monetary Claim

In addition to obtaining an Order of Possession, the application from the landlord also included a monetary claim for \$150.00 rent owed for December, \$850.00 rent owed for January and \$850.00 rent owed for February 2009.

I find that there appears to be some doubt about the \$150.00 owed for December 2009, which the tenant has alleged was waived by the landlord for the repair issues. There is also an allegation of a \$350.00 payment made by the tenant for which no receipt was issued as required under the Act. Given the uncertainty in regards to these two amounts, I find that the landlord is validly owed \$1,350.00 comprised of \$500.00 for the month of January and \$850.00 for the month of February.

The landlord's claim for rent owed or loss of rent for the month of March is premature and is dismissed with leave.

Tenant's Application Monetary Claim - Analysis

In regards to an applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer authority to determine the amount or order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming

the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord.

The tenant has claimed that the tenancy was devalued by persistent violations of the Act by the landlord, including maintenance deficiencies, electrical problems, absence of the required paperwork, entering the suite without proper notice and some aesthetic issues. While these contraventions of the Act could be considered as annoying, inconvenient and a cause for concern, I find that the tangible monetary value lost by the tenant is not extreme. Accordingly, I find that over the four months in question, the tenancy was devalued by a token amount of \$35.00 per month totalling \$140.00 and the tenant is entitled to be compensated in that amount.

Tenant's Application Remaining Issues

As the tenancy is ending, I find that the portion of the tenant's application seeking: an order to compel the landlord to comply with the Act; an order to compel the landlord to make repairs or emergency repairs; an order that the tenant may reduce rent for repairs, services or facilities agreed upon, but not provided; and an order to suspend or set conditions on the landlord's right to enter the suite no longer need to be determined and will be dismissed.

Conclusion

Pursuant to section 55(2), I hereby issue an Order of Possession in favour of the Landlord effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established total monetary entitlement of \$1,350.00 comprised of \$500.00 rental arrears for the month of January 2010 and \$850.00 for February 2010. I find that the tenant is entitled to compensation of \$140.00.

Setting off the two amounts, after reducing the debt to the landlord by \$140.00, I find that the landlord is entitled to a total monetary claim of \$1,210.00.

I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim leaving a balance due of \$785.00 and I hereby issue a monetary order under section 67 of the *Act* in this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the tenant's application is hereby dismissed without leave to reapply.

Neither party is entitled to be reimbursed for the filing fee.

Dated: February 2010

Dispute Resolution Officer