



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, MNR, MNSD, MNDC, ERP, PSF, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order. The tenant applied to cancel a notice to end tenancy; for a monetary order; for an order to have the landlord make emergency repairs; and provide services and facilities required by law.

The hearing was held via teleconference and was attended by the landlord's agent and one of the tenants.

At the outset of the hearing, I asked the tenant if he had submitted any documentary evidence. He indicated that he had submitted evidence to the Residential Tenancy Branch on February 15, 2010. The landlord's agent confirmed that he had received the tenant's evidence. As such, we continued the hearing and I required the tenant to re-submit his evidence to me by the end of business on February 24, 2010.

The tenant submitted his evidence by the end of business February 23, 2010.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

As well, it must be decided if the tenant is entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement and for emergency repairs; to an order requiring the landlord make emergency repairs and provide services or facilities required by law and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 33, 38, 67, and 72.

Background and Evidence

The landlord submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on December 8, 2008 for a one-year fixed term tenancy beginning on January 1, 2009 that converted to a month to month tenancy on January 1, 2010 for a monthly rent of \$2,550.00 due on the 1st of the month, a security deposit of \$1,275.00 was paid on December 9, 2008;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent dated December 4, 2009 with an effective vacancy date of December 17, 2009 for unpaid rent in the amount of \$2,550.00;
- A letter from the landlord to the tenant dated October 23, 2009 outlining the events surrounding the flood of the rental unit and the tenant's accommodation provided by the landlord during the flood and repairs and the compensation of the equivalent of rent for the month of November 2009; and
- Notes and Response document from the landlord dated January 12, 2010 regarding this dispute.

In addition the tenant submitted the following documents:

- Emails between the tenant and the landlord dating from October 5, 2009 to January 18, 2010 regarding aspects of the flooding and negotiations between the parties for a settlement;
- A copy of a document from the landlord entitled "Collection of Outstanding Rent and/or Other Fees" dated January 25, 2010 confirming the tenant owes \$5,150.00 in rent and late fees;
- A copy of Dispute Resolution Decision #XXXXXX dated January 18, 2010; and
- A copy of the tenant's receipt for the filing fee for Dispute Resolution Decision #XXXXXX.

The tenant's claim for damages is outlined in the following table:

Description	Amount
Lost work 40 hours @ \$60.00 per hour	\$2,400.00
Hotel accommodation 12 days @ \$300.00 per day	\$3,600.00
Rental a business meeting place and filing fee from previous hearing	\$2,000.00
Loss of contract, health issues and stress	\$5,000.00
Total	\$13,000.00

The tenant testified that he acknowledged that he should have paid rent and no longer disputes the notice to end tenancy. He further testified that he has given the landlord notice of his intent to vacate the rental unit. The landlord confirmed the tenant paid rent for February 2010 but that December 2009 and January 2010 was still outstanding.

The tenant testified that because of the flooding, he was unable to conduct business meetings and in essence lost a substantial business contract. The tenant also contends that he suffered headaches and a bleeding nose on a couple of occasions and that he was unable to sleep in the rental unit.

The tenant acknowledges the landlord provided him accommodation but that it was in a 1 bedroom 550 square foot unfurnished apartment and his normal rental is in a two bedroom 1,300 square foot apartment. The tenant contends he should have been provided with hotel accommodation.

The tenant provided testimony that he had to leave work on several occasions to deal with the flooding and repairs, for example to move his furniture out of the way for the repair contractors. The tenant confirmed that he had no renter's insurance.

The landlord's agent testified that the tenant has provided no evidence of any monetary costs that he incurred resulting from the flooding. The agent points out that in Section 14 of the tenancy agreement specifically prohibits using the rental unit for commercial or business purposes and therefore the landlord is not responsible for any business losses.

Analysis

The tenant provided no evidence to support the need for the landlord to make any emergency repairs or that the landlord had restricted the tenant's access to any facilities or services, I therefore dismiss these parts of the tenant's Application.

I am persuaded by the landlord's agent's argument that Section 14 prohibits the tenant from conducting business in the rental unit, as such, I dismiss the amounts from the tenant's application that related specifically to business losses or for the purpose of renting a meeting space for the tenant.

I find that the landlord provided adequate accommodation to the tenant during the repair and restoration of the rental unit and that it is not necessary for the tenant to be put up in a hotel when an alternate arrangement was made. I dismiss this portion of the tenant's application.

I also find that the landlord's provision of a month with no rent (November 2009) with a value of \$2,550.00 provided the tenant with adequate compensation for any lost time from work that required the tenant's attendance at the rental unit during the repairs and any health issues. I dismiss this portion of the tenant's application

In relation to the tenant's claim for the filing fee from his previous hearing the tenant should have included that as part of his application for that hearing. If he did include it as part of that application it would have been dealt with by the Dispute Resolution Officer who made that decision, I therefore dismiss this portion of the tenant's application.

As the tenant has been completely unsuccessful in his application, I dismiss the portion of his application requesting the filing fee for this hearing.

I accept that the tenants have been served with notice to end tenancy as declared by the landlord by posting it on the door of the rental unit on December 4, 2009. The notice is deemed to have been received by the tenant on December 7, 2009 and the effective date of the notice is December 17, 2009. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,200.00** comprised of \$5,100.00 rent owed and the \$100.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$1,276.20 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,923.80**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: February 24, 2010.

Dispute Resolution Officer