



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, LAT, RR

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to cancel a Notice to End Tenancy issued for unpaid rent or utilities, for an order authorizing the tenant to change the locks to the rental unit, and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The parties each gave evidence and were given the opportunity to cross-examine each other.

Issues(s) to be Decided

Should the Notice to End Tenancy be cancelled?

If the Notice to End Tenancy is cancelled, should the tenant be permitted to change the locks to the rental unit?

Should the tenant be permitted to pay a reduced amount of rent for repairs made to the rented premises?

Background and Evidence

This tenancy commenced on September 5, 2009 when the tenant took over from a previous tenant. The two tenants basically traded residences, and the previous tenant had paid the rent for September, 2009.

Rent in the amount of \$780.00 is payable on the 1st of each month. The tenant did not pay a security deposit, but by agreement, completed cleaning and repairs to the unit. The unit rented was a mobile home on a residential street in a rural area.

The tenant testified that it was agreed that she would take over this tenancy for \$780.00 per month including utilities. The landlord claims that utilities were not included in the rent. There was no written tenancy agreement.

The tenant testified that at the outset of the tenancy, the parties had a conversation about the mess left by the previous tenant, which included 9 abandoned vehicles and 5 full truck loads of garbage. The tenant wanted to rent this mobile home because it was 3 doors away from her mother's residence, who is ill with cancer, and the tenant wanted to be closer to her mother. The tenant also suffers from a disability. The tenant told the landlord that she had years of experience in repairs, painting, etc. from working with her father on his units over the years. It was agreed by the parties that the tenant would not be required to pay rent for October in exchange for cleaning and repairs.

The tenant testified that during the first week of the tenancy, she stayed at her mother's house and spent approximately 40 hours cleaning the rental unit.

The landlord claims that rent for November and December, 2009 was paid by the tenant, but currently, \$520.00 of rent remains outstanding for January, 2010 and \$780.00 for February.

The tenant testified that the unit required the following repairs:

- The mobile home has no insulation in the skirting. She stated that the landlord wanted her to leave the vents open to prevent the pipes from freezing, and she feels that it would not prevent such freezing, and would only allow heat to leave the residence.

The landlord testified that the building inspector had told him it was not necessary to insulate the skirting as long as there was heat tape on the pipes, which there is. This fact is disputed by the tenant, who says there is no heat tape.

- The wood stove had a 6 foot horizontal elbow going out of the wall instead of through the ceiling, being 4 feet to the wall and 2 feet outside the wall with an elbow leading back up. She stated that the wood stove must be certified and installed by a certified installer. The landlord cleaned it when she first moved in and the tenant used it for 2 or 3 weeks but build-up of creosote resulted in smoke coming back into the home. Further, a plate around the pipe which is meant to be attached to the wall to prevent a fire is not attached at all.

The landlord replied to this issue stating that he was never informed of any problems with the wood stove. He assumed she had been using it all winter. He also argues that there's 6 feet of pipe, and claims that is an exaggeration. If he had known there was a problem with the wood stove, he would have dealt with it.

- The tenant plugged in her vehicle one evening and in the morning discovered that all the breakers were blown, the van was froze up and she then discovered that the access to the hot water tank is in a closet on the outside of the home and the closet contains a ceramic heater which is plugged into the outside wall. She testified that that plug has its own individual breaker. She called the landlord at 7:00 a.m. to ask him to attend her residence because the pipes were frozen and she had no water. Her friend was with her, and waited at the residence until 1:45 p.m. and the landlord had not shown up. Shortly after her friend left, the landlord did show up and knocked on the door. The tenant was ill, was not dressed and did not answer the door. The landlord went into the residence despite her Rottweiler's barking, and she had to restrain her dog. The landlord stayed in the residence and walked through the house with a small blow dryer blowing it into the hole behind the washer in the floor in an attempt to thaw the pipes, which only caused the breaker to blow. He then told the tenant that she should open the vents that lead into the underside of the mobile home. She feels he did

nothing to assist, and only disturbed her. He would not go under the trailer and that's where the frozen pipes were, and no access to that area is available from the inside.

The landlord stated that the frozen pipes were under the bathtub at the back of the mobile home. By blowing hot air in that area, through the hole in the floor under the washer/dryer area, the ice would melt in that area and would then allow water to flow freely, and that it didn't freeze anywhere else. He also stated that he had vented that area for that very purpose, and that by leaving the vents open, the dead air space around it would prevent freezing. The landlord disputes her claim and stated that there are 2 plugs on the outside of the mobile home; one at the back and one at the front.

- The tenant testified that 3 of the windows have 3 panes of glass instead of 4. The landlord took some 2 ml. poly to cover the windows, but it did not help with the cold. The living room window has a plastic frame but was not properly installed and it leaks. The window in the addition falls out when opened. All metal windows cover with ice and when it melts, they leak on walls and curtains. The panes don't line up and are not sealed. She stated that they are not proper windows; they have gaps and don't reach.

The landlord testified that the metal framed windows are the original ones installed when the mobile home was built. Metal pulls the frost, which melts when it warms up or when the sun hits the windows. He has been installing new windows in his units, but it's hard to do in the winter. He stated that he did not know about the window falling out in the bedroom.

- 2 kitchen drawers are broken and have been left in pieces. The tenant made repeated requests to landlord to repair them.

The landlord did not dispute this testimony, and agreed that they need work.

- Carpet on the bedroom floor has candle wax, burns and dog urine stains. The landlord said he'd bring over a roll-end but never did.

The landlord testified that he told her he'd see what he could find in the fall to replace the carpet, being October or November.

- 3 exterior doors are on the residence, but none of them line up. Hinges need to be adjusted. The landlord brought weather stripping which was installed by the tenant, but it still didn't touch. Dead bolts need to be installed, and 2 door knobs are required on the bedroom doors. The landlord brought 1 exterior locking door knob instead, which didn't help.

The landlord stated that he misunderstood the tenant's concerns, and thought she wanted an exterior door knob, and gave her one with the keys. He did not hear anymore about weather stripping or cold entering the mobile home after he provided the weather stripping and poly.

- The previous tenant was a heavy smoker and had 3 large dogs in the residence, so the landlord said he would put a coat of paint in the residence, but didn't do so. He took the tenant 4 half cans of paint in different colors. The tenant painted one room 1 coat, but it still needs a 2nd coat.

The landlord testified that he was never told that she needed more paint to finish the job, and had he known that, he had lots more paint that he could have taken to her.

- The stove doesn't work correctly – only one burner works normally; the other 3 don't heat up, and only 1 element works in the oven. She showed the landlord, who turned on the elements, burned his hand and concluded there was nothing wrong with the range.
- Another issue raised by the tenant was a large amount of dog feces in the back yard, and testified that her dog had had 4 puppies. She had found homes for the puppies, but they were returned to her due to a parvo virus, which she was told by the vet comes from dog droppings. As a result, the puppies have to stay indoors. She stated that she asked the landlord to remove the pile while he had machinery on the premises for removing snow, but he declined to do so.

The landlord testified that she did not ask him to remove the pile in the yard while he was there with a backhoe removing snow.

With respect to the rent owing for January, 2010, the tenant testified that she attempted to drive to the landlord's residence to pay the rent, however, the motor in her van blew on her way and suddenly had tow and repair bills. She then discovered the illness of the dogs.

The tenant also stated that when she moved into the unit, the landlord and the previous tenant both told her that utilities were included in the rent. She stated that she would not have rented the unit if they weren't because she cannot afford to pay \$780.00 per month rent plus utilities. The hydro bill has not been paid since November 5, and the gas bill has not been paid since October 2. The gas was disconnected on January 21, 2010 and the tenant has been using 3 electric heaters ever since. Both parties agree that the previous tenant paid the utilities up to those dates.

The landlord testified that he was aware of some of the issues raised at this hearing by the tenant, but certainly not all of them. If he hasn't been told of repairs required, he can't do anything about them. He testified that he was not asked by the tenant to remove the dog feces from the back yard, and the first he heard of it was at this hearing.

The landlord's testimony was that he never would have agreed to rent the unit for that price including utilities. The previous tenant had paid the utilities up until November 5th for hydro and October 2nd for gas, and did so because they were still in his name. He had the utilities removed from his name on those date.

The landlord stated that he does not want the tenancy reinstated, and the tenant stated that she no longer wanted to rent the premises and would be moving.

Analysis

Should the Notice to End Tenancy be cancelled? If the Notice to End Tenancy is cancelled, should the tenant be permitted to change the locks to the rental unit?

The landlord served the tenant with a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities on January 9, 2010 for failure to pay \$520.00 rent which was due January 1, 2010 and \$412.42 for utilities after receiving written demand on January 9, 2010. The tenant paid \$260.00 on January 9, 2010.

Firstly, the *Residential Tenancy Act* states that:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

I do not find that the tenant deliberately withheld rent because of the repairs still required to the unit, but simply had a vehicle repair bill and a towing bill and could not afford both at the time. However, the landlord is owed rent for January and February, 2010. Section 46 of the Act states that:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or
(b) dispute the notice by making an application for dispute resolution.

The tenant did not pay the outstanding rent within the 5 days allowed under the Act, but did make her application for dispute resolution within that time. I find that once

February's rent became due, the tenant did withhold rent, and therefore, the landlord's notice should be upheld.

I also find that the tenant knew that utilities were not included in the rent. She testified that she chose not to put the utilities in her name because of the loss of heat due to the vent holes. She further stated that the previous tenant eventually had the utilities disconnected. Obviously, she was aware that the previous tenant, who she took over the tenancy from, had not told her that utilities were included. The landlord is entitled to recover the cost of the utilities from the tenant.

Should the tenant be permitted to pay a reduced amount of rent for repairs made to the rented premises? The evidence of the parties is that the landlord did, in effect, pay the tenant \$780.00 for cleaning and repairs to the unit by allowing her free rent for the month of October, 2009. The tenant testified that she spent about 40 hours cleaning the unit. In my calculations, \$780.00 divided by the 40 hours spent, equals \$19.50 per hour. I find that \$19.50 per hour is a fair wage for unlicensed repair work and cleaning. The landlord also permitted her to rent the unit without a security deposit because of the poor state of it due to the negligence of the previous tenant. The landlord testified that if he had been told that the tenant required more paint, he would have provided it; that if she wanted another door knob, he would have provided it; that if she had asked him to remove the dog feces from the back yard while he had his machinery at the residence, he would have done so. The landlord did bring her a door knob and paint as she requested, but he misunderstood what door knob she wanted. I find that the good faith of the landlord is unquestionable.

Conclusion

I find that the landlord is entitled to an Order of Possession, and I dismiss the tenant's application to cancel the Notice to End Tenancy without leave to reapply.

I further find that the tenant has already been reimbursed for the work spent on cleaning and repairs, and if she had communicated with the landlord about further repairs

required, he likely would have accommodated, or would have offered payment in one form or another, and I dismiss the tenant's application to reduce rent for those repairs and services, without leave to reapply.

Since the landlord is entitled to an Order of Possession, the tenant's application for an order to change locks to the rental unit is dismissed without leave to reapply.

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: March 2, 2010.

Dispute Resolution Officer