

DECISION

Dispute Codes CNR, MNDC, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy; for a monetary order; for an order to have the landlord complete repairs; and for a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a notice to end tenancy for unpaid rent; for a monetary order for compensation or loss; for an order to have the landlord complete repairs to the rental unit; to reduced rent for repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 32 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began when the tenant had been renting one of the landlord's rental units through another party who had a tenancy with the landlord that ended and the landlord and tenant agreed to start a new tenancy.

The parties dispute some of the details of the tenancy and no written tenancy agreement was entered into. The tenancy began on November 1, 2009 as per the landlord's testimony but the tenant testified that it began on December 1, 2009. The parties agree that rent is in the amount of \$800.00 per month for a month to month tenancy with no security deposit paid.

The landlord stated that the parties agreed that rent was due on the 1st of the month. The tenant testified that they never discussed when rent was due but she had assumed it was the 1st of the month.

The tenant submitted into evidence the following documents:

- A copy of a 10 Day Notice to End Tenancy for unpaid rent and security deposit in the amount of \$2000.00 with an effective date of March 28, 2010;
- A summary of events outlining events throughout the tenancy;
- Correspondence between the tenant to the landlord dating from November 10, 2009 until March 23, 2010 comprised of notices to the occupant; agreement to rent the rental unit; and letters identifying the condition of the rental unit;
- A copy of rent receipt dated January 25, 2010 for January 2010 rent in the amount of \$800.00; and
- 14 photographs showing the condition of the rental unit on November 16, 2009.

The landlord has submitted the following documents:

- A copy of an invoice from a contractor dated March 29, 2010 and cheque from the landlord dated March 31, 2010 for work completed in the rental unit;
- A copy of an invoice from an electrical contractor dated March 14, 2010 and a cheque from the landlord dated April 6, 2010 for work completed in this unit;
- A copy of a cheque from the landlord made out to the same contractor as noted above for renovation to the unit dated February 12, 2010; and
- Correspondence from the landlord to the tenant dating from February 12, 2010 until March 29, 2010 comprised of notices of entry for contractors and inspections; responses to the tenant's correspondence; an outlining the landlord's position on the issues under dispute.

During testimony the landlord stated that she served the Notice to End Tenancy to the tenant on March 28, 2010. The tenant's application was submitted on March 26, 2010, when asked about the discrepancy the landlord blamed her secretary for making an error. The tenant confirmed the Notice was served to her on March 23, 2010.

Although the application and the Notice to End tenancy indicated the tenant had failed to pay the rent for February and March, the landlord stated that the tenant had not paid rent for January as well. When questioned why the tenant had been able to submit a receipt that stated January 2010 rent was paid, the landlord testified that her secretary made another mistake.

Both parties agreed that no rent had been paid for February, March, April and May 2010 in the amount of \$3,200.00.

During the testimony regarding the condition of the rental unit and the dates of completion of work and the remaining outstanding neither party disputed that the work

was not required. The current dispute remains around what still needs to be completed and the duration of time that it took to complete the repairs.

The tenant testified that she had provided the landlord with several opportunities to complete the work while she was away or was willing to be away for periods of time. The landlord testified the tenant was not always available or that contractors were too afraid of the tenant's small dog.

The landlord testified that she had offered the tenant to move into another unit that had had repairs completed in February, 2010, but the tenant refused. The tenant confirmed the offer was made but she believed the repairs to that unit had not been completed so turned down the offer.

Analysis

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*. As such the tenant had not authorization to withhold rent from the landlord, I therefore dismiss her application to cancel the notice to end tenancy.

Section 32 requires the landlord to provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the documentary evidence submitted I find the landlord did not provide a rental unit in compliance with Section 32 when the tenancy began and that she failed to ensure the unit did comply until the majority of repairs were completed in late March 2010.

While the tenant contends there is still uncompleted work, the landlord testified that she thought the work had been completed, I therefore find these issues should be considered new issues identified to the landlord and allow her time to correct them now.

As a result I find the tenant is entitled to compensation for a loss of value in the tenancy until March 20, 2010. The tenant is requesting an amount equivalent to that equal to the monthly rent, while I am convinced the tenant's use of the rental unit was restricted I do not find that she could not occupy and use the rental unit. I find reasonable compensation to be in the amount of \$200.00 per month for the months of December 2009, January, February and March 2010.

Conclusion

Based on the above findings, I find the Notice to End Tenancy for Unpaid Rent to be in full force and effect.

I also find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$850.00** comprised of \$800.00 compensation owed for loss of value of the tenancy and the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from the rent owing of \$3,200.00 for a balance owed to the landlord of \$2,350.00 in accordance with Section 72 (2)(a) of the *Act*.

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: May 13, 2010.

Dispute Resolution Officer