

DECISION

Dispute Codes CNC, CNR, OLC, ERP, RP, PSF, OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end tenancy, a monetary order, an order that the landlord comply with the Act, make emergency repairs and provide services. The landlord made a cross-application seeking an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Issues to be Decided

Is the tenant entitled to an order setting aside the notice to end tenancy?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order that the landlord comply with the Act?

Is the tenant entitled to an order that the landlord perform repairs?

Is the tenant entitled to an order that the landlord provide services?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Background and Evidence

The parties agreed that the tenancy began on November 16, 2009 and was set to run for a term of 4 ½ months. The tenant claimed that the 4 ¼ months was set to expire on April 30, 2010 while the landlord claimed that it was to expire on March 31. The tenant claimed that the tenancy agreement submitted by the landlord was altered to end the tenancy in March instead of April. The parties further agreed that rent was set at \$575.00 per month and that the tenant paid a \$287.50 security deposit and a \$287.50 pet deposit. The parties further agreed that the tenant was served with a notice to end tenancy for unpaid rent (the “Notice”) on March 2 and that sometime between March 15 – 18 the tenant made a \$325.00 payment toward rent for March.

The tenant claimed that when he made the \$325.00 payment the landlord agreed that the tenant could work in the rental unit in lieu of paying the outstanding \$250.00. The tenant testified that he eventually paid the remainder of the rent in cash but did not receive a receipt. The tenant made his application to dispute the Notice on April 30. When asked why he did not dispute the Notice earlier, the tenant explained that he thought the Notice had been withdrawn by the landlord. The landlord testified that he always gave receipts to the tenant, denied having withdrawn the Notice and denied having received the balance of March's rent. The tenant further testified that he also paid April's rent in cash and again did not receive a receipt. The landlord denied having received rent in April. The tenant claimed that the landlord agreed that he could perform work around the rental unit in lieu of rent for May. The landlord denied having made such an agreement and testified that the tenant suffers from a disability which prevents him from performing physical labour. The tenant agreed that he cannot perform physical labour.

The tenant claimed that he has not had water in the rental unit since April 27. The tenant provided a copy of a letter purporting to be from the foreman of the public works crew in which he confirms that water to the property has not been shut off by the city. The tenant testified that the water line in the house is fully open. The landlord testified that when the tenant complained that he had no water, he went to the house to investigate but the tenant and his friends threatened him and the tenant would not grant him access to the basement. The parties agreed that a physical altercation occurred between them which resulted in the tenant being arrested and charged with assault. The landlord testified that he feels that attending the rental unit is unsafe.

The tenant testified that there are numerous repairs around the rental unit which need to be performed but which the landlord has refused to perform. The landlord denied that repair requests had been made. The parties agreed that at some point in April the landlord removed several windows from the rental unit and took them away for several days while they were being repaired. The tenant claimed that while the windows were gone it was very difficult to heat the unit and that as a result, he incurred higher than usual power charges.

The tenant testified that the landlord removed the tenant's telephone line which resulted in the tenant having to pay \$125.00 to reconnect to telephone service. The landlord denied having touched the telephone line.

The landlord seeks a monetary order for rental arrears and loss of income for March – May inclusive. The tenant seeks a monetary order for half of all rents paid, the refund of his security and pet deposits, \$75.00 for his power bill and \$125.00 for the cost of repairing his telephone line.

Analysis

First addressing the Notice, I find that the Notice is effective. I am not persuaded that the landlord withdrew the Notice. I find that the tenant has not proven that he paid the \$250.00 remaining in March and in any event, the tenant did not pay the arrears within 5 days of receipt of the Notice. I note that the tenant did not apply for additional time in which to dispute the Notice and I am therefore unable to extend the time for him to dispute the Notice. I find that the tenant is conclusively presumed to have accepted that the tenancy ended and I therefore dismiss the tenant's claim for an order setting aside the Notice.

I find that the tenant has failed to pay \$250.00 in rent for the month of March and has paid no rent whatsoever in the months of April or May. I do not accept that the tenant did not receive receipts and I specifically find that the landlord provided him with receipts when payments were made. I grant the landlord a monetary order under section for \$1,450.00 which represents \$250.00 in rent for March, \$575.00 in rent/lost income for April, \$575.00 in rent/lost income for May and the \$50.00 filing fee paid to bring his application.

I find that the tenant has not proven on the balance of probabilities that he made repair requests during the tenancy which were ignored by the landlord or that the landlord removed the tenant's telephone line. I therefore dismiss the tenant's claim for the recovery of half of all rent paid during the tenancy. I find that the tenant is entitled to compensation for 4 days in which he had no windows. I find that an award of \$50.00 will adequately compensate him the tenant for this inconvenience and I award the tenant that sum. I dismiss the tenant's claim for recovery of his power bill for that time period as he has provided no evidence as to what the

invoice was for that period or how it differed from other months in which the windows were not missing.

I accept that the tenant told the landlord that he does not have water, but I find that the tenant's actions created a situation in which it was impossible for the landlord to investigate the cause of the problem and perform repairs. I therefore find that the landlord cannot be held responsible to compensate the tenant for the loss of water.

As the tenancy is ending I dismiss the tenant's claims that the landlord comply with the Act, perform repairs and provide services.

Conclusion

The landlord is awarded \$1,450.00 and the tenant is awarded \$50.00. Setting off these awards as against each other leaves a balance payable by the tenant to the landlord for \$1,400.00. I order the landlord to retain the pet and security deposits which total \$575.00 in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$825.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is also granted an order of possession. The order must be served on the tenant. If the tenant fails to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

Dated: June 18, 2010
