



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, ERP, RP, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent, for an Order that the Landlord make emergency repairs and general repairs, for an Order reducing the Tenant's rent due to repairs not completed and to recover the filing fee for this proceeding.

At the beginning of the hearing, the Tenant admitted that he had not served the Landlord with his evidence package which consisted of copies of 12 black and white photographs. RTB Rule of Procedure 11.5(b) says that a Dispute Resolution Officer may refuse to accept evidence not provided to another party if the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice. As the Landlord has no way to respond to this evidence at the hearing, I excluded this documentary evidence but permitted the Tenant to describe it in his oral evidence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are repairs necessary?
3. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started on January 1, 2010. Rent is \$1,275.00 payable in advance on the 1st day of each month. On June 2, 2010, the Landlord served the Tenant with a 10 Day Notice for Unpaid Rent and Utilities. The Landlord claimed that the Tenant has not paid rent for May, June or July 2010. The Landlord did not submit a copy of the 10 Day Notice as evidence at the hearing.

The Tenant admitted that he has not paid rent for these three months but claimed he withheld his rent because the Landlord has failed to make repairs. The Tenant also admitted that he does not have an Order from the Residential Tenancy Branch authorizing him to withhold all or part of his rent and that he has not paid for emergency repairs.

The Tenant claimed that on May 11, 2010, an unknown person threw a rock through a window in the rental unit and broke it. The Tenant said he advised an agent of the

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Landlord (an onsite maintenance person) about the damage and this person claimed that it would be repaired in a couple of weeks however it has not been repaired to date. The Landlord claimed that the first time the Tenant mentioned the broken window was when she served him with the 10 Day Notice on June 2, 2010. The Landlord said she asked the Tenant if she could look at the window at that time but he refused to let her do so. The Landlord said she believes the Tenant is responsible for the damaged window.

The Tenant also claimed that from January until approximately late-March, 2010, the Landlord made improvements to the exterior or the rental property which included replacing the balcony door of the rental unit. The Tenant said that the Landlord did not finish the dry walling and framing around the door casing on the interior side with the result that it is not secure and lets in drafts. The Tenant said he has asked an onsite maintenance person for the Landlord to repair the door frame but that he was told it would take a couple of weeks. The Tenant said the door frame has not yet been repaired. The Landlord and her witness both claimed that the interior section of the door frame has been repaired.

The Tenant further claimed that the Landlord has failed to repair a kitchen light fixture that he said is hanging from the ceiling by only a few wires, a garberator and a shower head. The Tenant said he has asked the Landlord to repair these items as well but because there is a continuous change over in maintenance staff, they have not been repaired. The Landlord claimed that the garborator has already been repaired once and that it was not working because the Tenant was not operating it properly. The Landlord also claimed that the Tenant has not said anything about further repairs to the garberator or the light fixture or the shower head although. The Landlord said maintenance request forms are located in the lobby of the rental property and that the Tenant has never submitted a form. The Landlord also claimed that when the maintenance people did show up to the rental unit to make repairs to the drywall and garberator, the Tenant refused them access. The Landlord admitted that the Tenant was not given 24 hours written notice on these occasions.

The Tenant also claimed that there was a hole in the balcony and that he wanted bars installed on some of the windows of the rental unit.

Analysis

Section 46(2) of the Act says that a 10 Day Notice to End Tenancy must comply with s. 52 of the Act. Section 52 says that a Notice to End Tenancy when given by a Landlord must contain certain information and must be in the approved form. In the absence of a copy of the 10 Day Notice served on the Tenant, I find that there is insufficient evidence

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to determine if it complies with s. 52 of the Act and as a result, I find that ***it is unenforceable in these proceedings***. However, given that the Tenant admitted that he has not paid the rent arrears alleged and that he has no authorization under the Act to withhold his rent, the Tenant's application to cancel the Notice is dismissed without leave to reapply and the Landlord may make a separate application for Dispute Resolution an Order of Possession upon providing a copy of a valid 10 Day Notice as evidence in support of that application.

Section 32(1) of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant. Section 32(3) and (4) of the Act say that a Tenant is responsible for damages caused by his act or neglect but is not responsible for reasonable wear and tear. RTB Policy Guideline #1 defines "reasonable wear and tear" as natural deterioration that occurs due to aging and other natural forces, where the Tenant has used the premises in a reasonable fashion."

Section 33 of the Act defines an emergency repair as one that is urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and is made for the purpose of repairing major leaks in roofs, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks or electrical systems.

The Tenant argued that the broken window and unfinished repairs to the interior of the balcony door casing were emergency repairs because someone could easily break into the rental unit. The Landlord claimed that the window damage was caused by the Tenant and the balcony doors were repaired. I find that the broken window is an emergency repair and **I ORDER the Landlord to replace the broken glass no later than July 25, 2010**. I make this order without making any finding as to who is responsible for the damage. If the Landlord believes that the Tenant is responsible for the damage, then the Landlord may make a separate application to recover the cost of the repair from the Tenant.

Given the contradictory evidence of the Parties, I find that there is insufficient evidence to determine if the interior of the balcony door frame requires repairs. Consequently, **I ORDER the Landlord to attend the rental unit with the Tenant within 7 days of this Decision (upon giving the Tenant 24 hours written Notice of Entry in the appropriate form), to take photographs of the balcony door area and to provide each other with a copy of those photographs. I also ORDER the Tenant not to unreasonably restrict entry to the Landlord for this purpose.** The Tenant may then reapply for repairs (or compensation in lieu) upon providing copies of the photographs

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taken in the presence of the Landlord. Consequently this part of the Tenant's application is dismissed with leave to reapply.

I also ORDER the Landlord to investigate the alleged damage to the shower head, the kitchen light fixture and the garberator and if necessary to make repairs to them no later than July 25, 2010. I also ORDER the Tenant not to unreasonably restrict entry to the Landlord for this purpose. As stated above, I make no finding as to who is responsible for the alleged damages (if any) and if the Landlord believes the Tenant is responsible for them, then the Landlord may make a separate application for Dispute Resolution to recover the cost of the repairs from the Tenant.

I find that there is insufficient evidence that repairs are needed to address a hole in the balcony or if the windows of the rental unit require bars to address a safety issue and that part of the Tenant's application is dismissed with leave to reapply upon providing sufficient evidence of those matters.

In order to establish a claim for a rent reduction, the Tenant must show that he was not responsible for the damage in question, that he asked the Landlord to make repairs and that the Landlord has failed or refused to do so. In this case, I find that there is insufficient evidence to conclude that the Tenant is not responsible for any of the damages in question or that he brought the issue of repairs to the Landlord's attention prior to filing his application for Dispute Resolution. Furthermore, I find that it would not be appropriate to award the Tenant a rent reduction for 3 months for which he has admittedly withheld his rent without authorization. Consequently, the Tenant's application for a rent reduction to the date of the hearing is dismissed without leave to reapply. However, if the Landlord fails to make the repairs by July 25, 2010 as ordered, the Tenant may reapply for a rent reduction or compensation for the period of time following the date of the Order that the repairs remain unfinished.

As the Tenant has only had limited success in this matter, I also find that it is not an appropriate case to grant his application to recover the cost of the filing fee from the Landlord and that part of his application is also dismissed without leave to reapply.

Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 2, 2010 is dismissed without leave to reapply. A repair order is made on the above-noted, highlighted terms.



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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: July 13, 2010.

Dispute Resolution Officer