



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OPR, MNDC, MNR, MT, CNL

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent. The tenant applied for an order to cancel the notice to end tenancy for landlord's use of property and for additional time to make application to do so. The tenant also applied for a monetary order for compensation for the inadequate living conditions of the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant was not served with a notice to end tenancy for landlord's use of property therefore her application to dispute a notice to end tenancy for landlord's use and more time to do so is irrelevant to this proceeding. Both parties had entered into a mutual agreement to end tenancy on June 20, 2010 with an effective date of September 30, 2010. However, on August 12, 2010, the tenant was served with a ten day notice to end tenancy for non payment of rent.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to compensation for the poor living conditions in the rental unit?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on November 01, 2007. The rent was set at \$850.00 per month due on the first of each month.

The landlord stated that he received several complaints from the neighbours and the local City Hall, regarding noise disturbances, accumulation of garbage, unlicensed vehicles on the property including a motor home that was occupied and the spread of rats. The landlord made an appointment to visit the tenant on June 20, 2010. The landlord stated that he was in shock when he saw the condition of his property. There was garbage strewn all over including on the roof top and unlicensed vehicles parked in the yard.

Both parties came to an agreement to end the tenancy effective September 30, 2010. Attached to this agreement was an addendum which required the tenant to tidy up the yard, remove all garbage, remove all unlicensed vehicles and purchase insurance.

In response to a conversation between the parties in which the tenant asked for additional funds to move out earlier, the landlord wrote a letter to the tenant. This letter stated that the security deposit will be returned after the landlord conducts an inspection of the vacated rental unit. The letter also offers an incentive of \$1,500.00 if the tenant moved out prior to August 01, and \$2,000.00 if the tenant moved out prior to July 01, 2010. This incentive would be given to the tenant along with the security deposit. As of the date of the hearing September 13, 2010, the tenant had not moved out.

The tenant failed to pay rent for July and August and on August 12, 2010; the landlord served the tenant, with a ten day notice to end tenancy. The landlord has applied for an order of possession and for a monetary order for rent for July, August and September.

The tenant stated that the garbage that was on the property was left there by the previous tenant. The landlord denied this and stated that the unit was renovated prior to the start of the tenancy, and new flooring, new furnace and hot water tank were installed.

The tenant had complained about a leak in the roof and the tenant's brother was hired to fix the leak. The landlord stated that the tenant complained about rats and he sent an exterminator to take care of the problem. The landlord filed a receipt as evidence.

The landlord stated that despite having had the tenant's brother fix the roof, the tenant reported a leak in December 2009. The landlord requested the tenant to place tarpaulins over the leak until the roofer fixed the problem. The landlord covered the cost of the tarpaulins. The entire roof was replaced the following Spring. The landlord filed a receipt to support this.

The tenant stated that through the tenancy, she made several verbal complaints about various situations in the rental unit, which were ignored by the landlord. The landlord stated that the tenants had not complained about anything other than the rats and the roof until after June 20, 2010 which is the date that they signed the mutual agreement to end tenancy.

Even though the tenancy was coming to an end, the landlord responded to every complaint and sent in the required repairmen to address the problems reported by the tenant. The tenant stated that the electrical supply was faulty and the landlord responded by sending in an electrician who made minor repairs. The landlord filed the electrician's report. The tenant also complained of mould and mushrooms growing in the washroom and the landlord sent in a repair man who reported that the sealant had turned black but there was no evidence of mould under the panel.

The tenant has applied for a monetary order in the amount of \$3,700.00 as compensation for the leaky roof, presence of rats, mould in the washroom and problems with the electrical system.

The tenant also stated that the landlord had agreed to pay \$2,000.00 to the tenant for work done around the house and had not done so to this day. The landlord denied having agreed to pay the tenant \$2,000.00 and the tenant did not have any document to support her claim.

The tenant also stated that due to the rats and the leaky room, her furniture got ruined. She stated that she had purchased the furniture about a year and a half ago for \$3,000.00 and was claiming \$1,500.00 as compensation. The tenant did not file any evidence to support her claim.

Analysis

Pursuant to section 44(1)(c) of the *Residential Tenancy Act*, a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

Based on the sworn testimony of both parties and the documents filed into evidence, I find that the parties came to a mutual agreement to end the tenancy effective September 30, 2010. Therefore, pursuant to section 55 of the *Residential Tenancy Act*, I am issuing a formal order of possession effective this date. This Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$2,550.00 for unpaid rent for the months of July, August and September. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount of. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The tenant has applied for compensation in the following amounts:

Poor living conditions \$3,700.00

Repair work done in rental unit \$2,000.00

Loss of furniture \$1,500.00.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that she informed the landlord of problems in the unit and he ignored her requests for repairs. The landlord denied having received any requests for repairs prior to June 20, 2010 other than for the leaky roof and the rat problem. The landlord filed evidence to show that he acted on these complaints in a timely manner. Therefore I find that the tenant has not established her claim for compensation of \$3,700.00.

The landlord denied having any contractual arrangement with the tenant for work in the amount of \$2,000.00 and the tenant did not file any evidence to support her claim. Accordingly her claim for this amount is dismissed.

The tenant also did not file any evidence to support her claim that her furniture was ruined, that it was ruined due to negligence on the part of the landlord or verification of its monetary value. Therefore the tenant's claim for \$1,500.00 is dismissed.

Conclusion

I grant the landlord an order of possession effective on or before 1:00 p.m. on September 30, 2010. I also grant the landlord a monetary order in the amount of **\$2,550.00.**

The tenant's application is dismissed in its entirety.

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: September 13, 2010.

Dispute Resolution Officer