

DECISION

Dispute Codes CNC CNR RP RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to Obtain Orders to cancel a Notice to End Tenancy for cause, to cancel a Notice to End Tenancy for unpaid rent, to have the Landlord make repairs to the unit, and allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents for the original application were served by the Tenant to the Landlord, in accordance with section 89 of the *Act*, sent via registered mail on July 30, 2010. Service of the amended application was completed in person by the Tenant's sister to the Landlord's office on September 13, 2010. The Landlord confirmed receipt of both applications and the hearing documents.

The Landlord, Agent, Maintenance Manager, and the Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Tenant entitled to Orders to cancel the Notices to End Tenancy under sections 46 and 47 of the *Residential Tenancy Act*?

Is the Tenant entitled to Orders to have repairs completed and for reduced rent in accordance with sections 32 and 65 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the parties entered into a month to month tenancy which began on July 1, 2010. Rent is payable on the first of each month in the amount of \$1,000.00 and the Tenant paid a security deposit of \$500.00 on May 1, 2010.

The Agent testified that she served the Tenant two notices to end tenancy. The 1 Month Notice to End Tenancy for Cause was posted to the Tenant's door on July 26, 2010 at 11:06 a.m. and the 10 Day Notice to End Tenancy for Unpaid Rent was posted on September 2, 2010 at 2:35 p.m.

The Tenant testified and confirmed receipt of both Notices to end tenancy. She confirmed that she has not paid the September 1, 2010 rent in full and that she has made only one payment of \$500.00 on September 9, 2010.

The Landlord testified that a receipt for "use and occupancy only" was issued to the Tenant on September 9, 2010 as supported by the copies provided in the Landlord's evidence. The Landlord confirmed that she has attended today's hearing to defend the Notices issued and to ask for an Order of Possession that would be effective after two days of service.

The Tenant confirmed that if the tenancy continues she would like to have an Order to have the Landlord complete the repairs to her unit and install the bathtub that is currently sitting in her basement. She advised that the previous owner allowed her to move into the rental unit in June 2010 while renovations were underway and she was involved in completing many of the renovations herself. When these new owners took over the building they continued to ignore her requests to have the renovations finished. She did not put her requests to the Landlord in writing and she has not had an opportunity to take photos to provide as evidence. There is no cabinet in her bathroom, there are several baseboards that are not nailed to the wall, and the bathtub has not been replaced. She confirmed that the unit was under renovations at the time she moved in. She had a verbal agreement with the previous landlord that the renovations would be completed.

The Landlord argued that the Tenant has never requested that the bathtub be replaced when she came in to pay her rent. She stated that this is usually when tenants advise

them of required repairs which she would then document and pass on to the maintenance department.

The Maintenance Manger confirmed that shortly after taking over this building they completed a walkthrough of every unit. He retrieved his notes that were made of this unit inspection on July 7, 2010, and confirmed that he saw that there was a new bathtub sitting in the basement. He went on to advise that there was no indication that the current tub had to be replaced. He acknowledged that the tub was old but still functional. He confirmed that other minor issues were noted and have since been repaired.

In closing the Tenant stated that the minor repairs were only completed since her application was filed.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 26 of the Act provides that a tenant must pay rent when it is due in accordance with the tenancy agreement. The evidence supports the Tenant failed to pay her rent on September 1, 2010. The 10 Day Notice was posted to the Tenant's door on September 2, 2010 and the Notice is deemed to be received by the Tenant on September 5, 2010, three days after it was posted, in accordance with section 90 of the Act. The Tenant was required to either pay her rent in full or file for dispute resolution within five days of receipt of the Notice, September 10, 2010. The Tenant made a partial payment on September 9, 2010 and did not amend her application to file to dispute the Notice until Monday September 13, 2010.

Upon review of the 10 Day Notice to End Tenancy for Unpaid Rent, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the

Notice. As noted above the Tenant has failed to respond to the Notice within the five day requirement; therefore I dismiss the Tenant's application to cancel the 10 Day Notice issued for unpaid rent.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Therefore I approve the Landlord's request for an Order of Possession.

An analysis of the 1 Month Notice to End Tenancy is not being conducted in light of ending the tenancy above based on the 10 Day Notice to End Tenancy.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant is seeking an Order to have the Landlord make repairs to the rental unit and for reduced rent for services agreed upon but not provided. Upon careful review of the

evidence I find that the Tenant failed to provide sufficient evidence which proves that the Landlord was informed of and is responsible for the agreement she had with the previous landlord. I find that there is insufficient evidence to prove the Tenant suffered a loss to her tenancy as a result of this alleged agreement not being fulfilled. As per the aforementioned the Tenant has failed to prove the test for damage or loss as listed above and I hereby dismiss her application.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord's decision will be accompanied by an Order of Possession effective two days upon service to the Tenant. This Order must be served on the Tenant and may be filed in Supreme Court and enforced as an Order of that court.

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 21, 2010.

Dispute Resolution Officer