



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, RR, MND, MNSD, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, monetary order and an order permitting him to reduce his rent and a cross-application by the landlord for a monetary order and an order of possession. Both parties participated in the hearing.

At the hearing the parties agreed that the tenant had vacated the rental unit. The tenant's claims for an order setting aside a notice to end his tenancy and an order permitting him to reduce his rent were withdrawn as was the landlord's claim for an order of possession.

The landlord submitted evidence to the Residential Tenancy Branch and to the tenant approximately 10 days before the hearing. The tenant responded to the landlord's evidence by submitting his own evidence to the Residential Tenancy Branch on the morning of the hearing and to the landlord immediately prior to the hearing. As the tenant could not reasonably have responded to the landlord's evidence 5 business days prior to the hearing as required by the Rules of Procedure, I advised the landlord that he had the option of either requesting an adjournment to afford him opportunity to respond to that evidence or to proceed without having had opportunity to review and respond to the evidence. The landlord elected to proceed with the hearing and agreed that the tenant's evidence would be considered despite his not having had the opportunity to respond to it.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 1, 2006 and ended on June 30, 2010. The tenant paid a \$1,450.00 security deposit and a \$300.00 furniture deposit at the outset of the tenancy. The parties further agreed that in the first term of the tenancy, from July 2006 – June 2007, rent was \$2,900.00 per month. From July 2007 – June 2008, rent was \$3,050.00 per month. From July 2008 – June 2009, rent was \$3,350.00 per month. From July 2009 – June 30, 2010, rent was \$3,450.00 per month. The parties signed a new tenancy agreement at the beginning of each term.

The tenant seeks to recover \$1,000.00 per month in rent for the last two years of his tenancy as he claims he did not receive full value for his rental dollar. The tenant described the condition of the rental unit as gradually deteriorating over the course of the tenancy as the landlord failed to attend to required repairs and maintenance. The tenant's specific complaints included the sliding back door being difficult to operate with the lock malfunctioning on occasion locking him and his family out of the house, the burners on the oven not all being operational throughout the tenancy, the indicator lights on the oven not working and the oven door not fitting properly and eventually falling off. The tenant provided evidence to show that the landlord secured the oven door with a latch hook rather than the oven having been replaced or properly repaired.

The landlord argued that the fact that the tenant continued to enter into a new lease every year shows that the rental unit could not have been in the state of disrepair described at the hearing. The landlord further testified that he responded to all of the tenant's complaints in a timely fashion and provided a list of repairs and maintenance issues addressed throughout the tenancy. Specifically addressing the issue of the oven door having fallen off, the landlord testified that the repairman was unable to find parts

as the oven was an old model and that as the owner wanted to replace the oven in the future, a temporary repair with a latch hook was deemed sufficient.

The landlord made a claim for \$1,180.00 to clean the rental unit at the end of the tenancy and a further \$12,577.60 to perform repairs at the end of the tenancy. The landlord acted as an agent for the owner during the tenancy and at the hearing confirmed that his agency agreement with the owner ended on July 1, 2010. The landlord testified that the documents submitted showing the cleaning and repair costs were estimates and that to the best of his knowledge, the owner of the unit engaged or plans to engage the contractors who supplied the estimates to perform the required labour. The tenant submitted photographs taken the day before the hearing showing that the rental unit had been effectively “gutted,” with appliances, cabinetry, flooring and window coverings having been removed.

Analysis

First addressing the tenant’s claim, the tenant maintained that the landlord did not respond or responded ineffectually to his requests for repairs. In order to establish his claim the tenant must prove on the balance of probabilities both that the rental unit required repairs and that the landlord failed to perform adequate repairs after having been advised of the problems. Other than his oral testimony, the tenant provided no evidence to corroborate his claim that he made repeated requests for repairs which went unheeded during the tenancy. The only written record of complaints is a letter dated May 19, approximately one month before the tenant vacated the rental unit, in which the tenant advised the landlord of deficiencies.

With respect to repair issues which were inadequately addressed, the landlord’s evidence shows that the patio door lock was first repaired on June 10, 2009 and was repaired a second time on November 23, 2009. The tenant claimed that the door was not fully functional and that the lock malfunctioned over a period of at least two years. In the absence of corroborating evidence to show that the problem was reported to the landlord earlier than June of 2009, I find that the report was first made to the landlord in

June of 2009. I find that the landlord made several unsuccessful attempts to repair the patio door and I find that the door was not adequately repaired in the last year of the tenancy. I find that on May 19, 2010 the landlord was advised that the oven door had fallen off. The landlord installed a latch-hook on the door on May 27 but made no attempt to perform a proper repair. I find that the tenant was deprived of the reasonable use of the oven for 6 weeks. Although the landlord's list of repairs to the property lists a number of other repairs, the repairs to the door and the oven are the only repairs which were clearly inadequate.

The fact that repairs were required does not in itself entitle the tenant to compensation. Compensation is warranted where after having been advised of repair issues, the landlord failed to act or the action taken was insufficient to adequately address the problem. I find that the tenant has proven that the back door was in a state of disrepair for one year and that he could not use the oven for 6 weeks. I find that an award of \$1,300.00, or \$100.00 for 13 months, will adequately compensate the tenant for the door issue and an award of \$150.00 will compensate the tenant for the loss of use of the oven for 6 weeks.

The tenant claimed that the rental unit was overvalued for the last two years of the tenancy and argued that he should be entitled to receive a rebate of \$1,000.00 per month for 24 months. The tenant further argued that the landlord implemented rental increases which were above what is permitted under the Act and Regulation. The tenant signed a series of one year leases, each of which stated that the tenancy ended at the end of the term. The tenant chose to enter into successive fixed term tenancies and on each occasion could have negotiated the rent which was set for the fixed term. Apparently he chose not to do so. I find that no rent increases were implemented during the tenancy and further find that the tenant freely chose to pay the amount agreed upon. While the tenant may have been paying above the market rate, it was his choice to do so. Having earlier found that the tenant failed to prove that he made complaints which went unheeded and having found that the tenant chose to pay what he now considers to be an exorbitant rent, I dismiss the claim.

Turning to the landlord's claim, the tenant acknowledged that he did not pay rent in the month of June. I find no legal basis on which to excuse the tenant for a rental payment for that month and I award the landlord \$3,450.00. The landlord provided estimates for work, but was unable to provide credible testimony that any of the work has been performed or that it will be performed. I accept the tenant's evidence that the rental unit is currently in the process of being completely remodelled and I find it more likely than not that the owner intended to remodel the unit in any event. I have arrived at this conclusion because the tenant's photographs show renovations which far exceed the scope of what is shown on the repair estimates. I am unable to find that the owner suffered an actual loss and accordingly I dismiss the claim for damages.

Conclusion

The tenant has been awarded a total of \$1,450.00 and the landlord a total of \$3,450.00. As each party has enjoyed partial success, each party will bear the cost of his own filing fees. Setting off these awards as against each other leaves a balance of \$2,000.00 payable by the tenant to the landlord. I order the landlord to retain the \$1,450.00 security deposit, \$300.00 furniture deposit and the \$57.50 in interest which has accrued to the date of this judgment in partial satisfaction of the claim and I order the tenant to pay the balance of \$192.50 to the landlord forthwith. I grant the landlord a monetary order under section 67 for \$192.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: September 17, 2010

Dispute Resolution Officer