Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, MNR FF

This application was brought by the landlord seeking an Order of Possession based on the mutual agreement to end tenancy signed by both parties for the tenant to vacate the unit on August 31, 2010. The landlord was also claiming rent for 3 months in the amount of $4,800.00. At the outset of the hearing the landlord advised that the tenant vacated the unit on September 10, 2010.

Both the landlord applicant and tenant respondent appeared and gave testimony.

Preliminary Matters

Respondent's Evidence

The tenant had submitted evidence to the RTB file but had not served this evidence to the applicant. Rule 4.1 requires that when a respondent intends to dispute a claim, copies of all available documents and other evidence that he or she intends to rely upon as evidence must be received by the Residential Tenancy Branch and *served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding* as defined in the Rules of Procedure.

In some cases the date of the dispute resolution proceeding may not allow the five (5) day requirement to be met and if this is the case, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

In this instance, I find that copies of the respondent's evidence were not served on the applicant as required and therefore the evidence will not be considered. However, the tenant was at liberty to give verbal testimony about the evidence.

Parties to the Dispute

Two tenants were named in the application as respondents, JFD and JD. The one tenant who appeared, JFD, objected to inclusion of the alleged co-tenant, JD, as a respondent on the landlord's application on the basis that this individual was not responsible for the tenancy and therefore not a party to the proceedings. The tenancy agreement submitted into evidence verified that JFD was the tenant and made no indication that there was any second tenant or co-tenant. The tenancy agreement also indicated that the monthly rent was $800.00 per month and included an addendum indicating work that was to be performed by the tenant, JFD. The tasks listed on the addendum apparently represented a full exchange for the monthly rent.

According to the landlord, after JFD signed the tenancy agreement, the co-tenant, JD, later signed a separate tenancy agreement for the same rental unit with the exact same terms except an additional $800.00 in rent for total rent of the unit changed to be $1,600.00 per month. The landlord's position was that this later agreement was to be amalgamated with the original agreement and both treated as the tenancy agreement. However, no copy of this subsequent tenancy agreement signed by JD was submitted into evidence.

Even if I accepted that another tenant had joined the tenancy signing an additional copy of the tenancy agreement, this would still mean that only one name would be shown on each one of two separate tenancy agreement documents. There was no mutually-signed contract to verify that both parties had agreed to an amalgamated tenancy agreement that included both of them as co-tenants. In any event, section 14 of the Act states that standard terms in a tenancy agreement cannot be changed and that a tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment. It would not be possible to implement an amended agreement with increased rent as long as the original tenancy agreement was still in place.

In addition to the above, I find that the copy of the tenancy agreement submitted into evidence only names JFD as the tenant and does not show any other co-tenants or occupants. Therefore, I find that while JD may have been an occupant, he was not a co-tenant and would have no standing in the proceedings before me. Therefore I amend the application to exclude JD as a respondent in the landlord's application.

Jurisdiction

Section 6 of the Residential Tenancy Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) *[determining disputes]*.

Section 58 states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that

(i) are required or prohibited under this Act, or

(ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

The written tenancy agreement and addendum submitted into evidence appear to indicate that the parties had made an arrangement for the tenant to earn part of the rent via a “rent-for-work” agreement. From the testimony of both parties, the agreement provided that the tenant’s rent would be reduced in full by the value of certain work performed during the three month period. However, the tenancy addendum did not contain anything specific about the agreed-upon number of hours or details about the rate of hourly pay to be credited to the tenant for his labour.

I find that the issue of how much rental arrears were owing, if any was impacted by factors other than those governed by the Residential Tenancy Act.

Even if the precise “work-for-rent” terms were clearly defined within the tenancy agreement, which they were not in this situation, I find that section 6(3)(a) of the Act would apply. This section states that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations and section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to do so is of no effect.

In situations where the agreement is noncompliant or missing provisions, the Residential Tenancy Act would then apply.

In the matter before me, I find that assessing relative values of work performed by this tenant as applied to the amount of rent owed to the landlord clearly pertains to contractual terms that are beyond my authority under the Act and this

fact functions to impede a determination of what rent, if any is owed to the landlord by the tenant.

Issue(s) to be Decided

In this application he landlord was seeking an Order of Possession and a monetary order for rental arrears. The issue to be determined based on the testimony and the evidence was whether or not the landlord was entitled to a monetary order for rent owed.

Background and Evidence

The landlord submitted into evidence a copy of the tenancy agreement, a copy of a Ten Day Notice dated September 1, 2010, a copy of a mutual agreement to vacate on August 31, 2010, photos, a copy of a receipt for a $400.00 deposit and copies of written communications between the parties. The landlord testified that the claim for $4,800.00 was for 3 months unpaid rent for June, July and August 2010. The landlord testified that the intent was that the rent would be satisfied by the tenant's performance of renovation and repair work on the unit, but all of the required the work was not done by the tenant and this was the reason that the landlord was claiming compensation.

The tenant testified that a great deal of renovation and repair work was completed on the rental unit and he also performed other tasks performed on other locations by the tenant on behalf of the landlord. The tenant gave testimony listing the jobs that were done and according to the tenant the value of the work more than satisfied the monthly rent of $800.00.

The tenant gave verbal testimony alleging that the landlord had altered the original tenancy agreement by changing the fixed-term provisions after-the-fact and had also imposed an illegal rent increase by doubling the $800.00 rent provided for in the tenancy agreement allegedly because of a purported co-tenant. The tenant's position was that the landlord was not owed any money at all and in fact had received renovation and repair services that enriched the landlord's rental business beyond the set rental rate for the unit.

In any case, the tenant acknowledged that the tenant did sign the mutual agreement to end the tenancy on August 31, 2010 but did not leave until September 10, 2010

Analysis

In regards to the landlord's monetary claim, I have already determined that assessing relative values of labour performed by the tenant as applied to reduction of rent owed to

the landlord was not within my authority under the Act but did cloud the issue of what amount of rent if any was outstanding.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if ; (a) the term is inconsistent with this Act or the regulations, (b) the term is unconscionable, or (c) *the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

Given the above, I find that enforcing the rental payment terms contained in this tenancy agreement are impossible due to the fact that they are not expressed with sufficient clarity due to the addendum.

In addition to the above, the evidence given by each of the parties about the value of the work contribution portion of the rent consisted only of disputed verbal testimony. When the testimony given is contradictory it is important to note that the two parties and the testimony each puts forth, do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving during these proceedings, that the compensation being claimed as damages is justified under the Act.

Accordingly I find that the landlord's monetary claim for rental arrears for June., July and August 2010 must be dismissed.

In regards to the loss of rent claimed for September 2010, based on the evidence and the testimony of both parties, I find that the tenant had agreed in writing to vacate the unit and turn over possession to the landlord as of August 31, 2010 and failed to do so until September 10, 2010. Accordingly I find that the landlord suffered a loss and is entitled to retain the $400.00 security deposit paid by the tenant.

Conclusion

I hereby grant the landlord monetary compensation of $400.00 for loss of rent for September 2010 and order that the tenant's $400.00 security deposit be retained in satisfaction of the claim. The remainder of the landlord's application is dismissed in its entirety without leave to reapply.

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: October 2010.

Dispute Resolution Officer