



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, CNR, MNDC, ERP, RP, OPT, FF

Introduction

This hearing dealt with two applications as follows:

By the landlord: for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent and to keep the security deposit; and to recover the filing fee for his application.

By the tenant: for the cancellation of an Order of Possession; a Monetary Order for cost of emergency repairs, compensation for damage or loss under the Act, and the return of the security deposit; for the landlord to make emergency repairs, to make repairs to the unit and provide services or facilities required by law; for an Order of Possession of the rental unit; and to recover the filing fee for his application.

Both parties attended the hearing and provided affirmed testimony. They made oral submissions and confirmed receipt of the evidence they intended to submit at the hearing.

At the outset, the landlord stated that the tenant moved out of the rental unit on February 2nd, 2011. Therefore the landlord's application for an Order of Possession is dismissed. Accordingly, the tenant's applications for an Order of Possession, cancellation of the landlord's Order of Possession, emergency repairs, and to provide services or facilities are dismissed.

Issue(s) to be Decided

Is the landlord entitled to keep the security deposit and a Monetary Order?

Is the tenant entitled to the return of the security deposit and a Monetary Order?

Preliminary matter

After a brief discussion on the tenant's statutory obligations regarding the rent, the parties mutually agreed that the tenant owes the landlord an outstanding balance of \$8034.56 for unpaid rent. The tenant established this amount at the hearing, based on a calculated per diem rate of \$101.92, to which the landlord agreed.

Background and Evidence

The rental unit consists of a newly constructed detached home. Pursuant to a verbal agreement, the fixed term tenancy was based on an 18 month and 15 days lease, starting on January 15th, 2010. The rent for the duration of the tenancy was \$37200.00 per year, payable in 3 monthly instalments of \$9300.00 starting February 1st, 2010. The tenant paid a security deposit in the amount of \$1550.00. Condition inspection reports were not completed at the start or the end of the tenancy.

The landlord testified that he disagreed with the issues identified in the tenant's written submissions. He stated that at the start of the tenancy he instructed the tenant to proceed with any required repairs and to submit the receipts.

The landlord stated that there were no problems with the tenancy: he said that he was in good terms with the tenant until the tenant ran into financial problems around October 2010. He stated that at that point the relationship deteriorated and that the tenant made several monetary claims for repairs needed to the property. Until then, the landlord stated that only received one email from the tenant on August 26th, 2011, listing 14

issues with the rental unit. The landlord stated that he sent the list in form of a claim to the National Home Warranty Group Inc. The landlord said that an inspector attended the residence and that the only sub-standard issues identified were the dining room floor slightly sinking and inadequate venting in the laundry room. The landlord stated that these issues were not completed as they are still under consideration by National Home Warranty Group Inc.

The landlord said that he was not aware of any other issues with the tenancy until he served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on December 16th, 2010. The landlord said that the tenant never sent him any receipts for repairs.

The tenant testified that he did not disagree with the contents of the landlord's evidence, but disputed the chronology and the times during which some of the events occurred. The tenant argued that he told the landlord about a \$546.00 plumbing repair when the washing machine flooded. The landlord interjected and said that the tenant told him not to pay him as a bonus for other favours, however the tenant deducted that invoice from the October rent.

The tenant stated that in November 2010, a major flood occurred in the kitchen. He said that his son slipped on the wet floor and hurt himself. He called the landlord who told him to call a plumber have the problem fixed.

The tenant said that his plumber could not come, and that another plumber told him the repair could cost as much as \$6000.00, which the tenant was not willing to pay in advance. The tenant said that the landlord told him to contact National Home Warranty Group: the landlord denied that statement. The tenant said that the landlord never came to the property and that the problem was never fixed.

The tenant said that there were several electrical problems: light bulbs kept blowing up; the current was low; and the electrical panel needed servicing. The tenant said that he paid \$447.83 for these repairs but the landlord did not reimburse the cost. The tenant

also had to make drywall repairs in relation to exposed wires behind the stove at a cost of \$413.60 for which he was not reimbursed. The landlord argued that he did not reimburse the tenant because the tenant did not send the invoices. The tenant contended that the landlord kept telling him to contact National Home Warranty.

In his evidence, the tenant provided receipts for electrical repairs for \$447.83 and \$313.60. The tenant also provided 12 photographs to support his evidence concerning the deficiencies in the house, in particular a hole in the upstairs bathtub responsible for water leaking through an electrical fixture and onto the kitchen floor, where the tenant's son slipped and hit his head on a granite counter.

In his evidence, the tenant provided a monthly report of the deficiencies with the rental unit. To summarize the report, the tenant made a claim for loss of use and enjoyment totalling \$21721.93. That amount includes \$5000.00 for inconveniences and hardships, and \$3000.00 for moving expenses.

Analysis

While a landlord may be liable for moving expenses if the landlord breached a material term of the tenancy agreement, I find insufficient evidence in this matter to prove that the landlord committed such a breach. Therefore I dismiss the claims for hardships, inconveniences and moving expenses for the combined sum of \$8000.00.

Concerning the balance of \$13721.93; I find that this amount represents approximately 37% of the rent paid in this tenancy. The tenant's monetary claim related to several issues that are not considered as emergency repairs under the Act. The parties entered into a verbal agreement, however their versions on this agreement are now at complete odds and not supported by independent evidence. The onus was on the tenant to prove, on a balance of probabilities, that the landlord violated the Act. He has not provided evidence that satisfies this burden of proof.

Section 32(1) of the *Residential Tenancy Act* provides in part that a landlord must provide and maintain the rental property in a state that complies with the health, safety and housing standards required by law.

Section 33(5) of the act also provides in part that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims for those repairs and gives the landlord a written account of the emergency repairs.

I prefer the tenant's evidence that he was referred to a third party to claim for repairs. The tenant testified that he reported the problem to the landlord who told him to contact National Home Warranty Group Inc. Since the landlord agreed to pay for any repairs, I find that the tenant is entitled to recover the electrical costs as evidence by the invoices totalling \$761.43.

Concerning the results of the inspection, the tenant provided a letter dated November 1st, 2010 from National Home Warranty to the landlord which states in part:

"Enclosed is a list of the defects that require immediate attention by the builder:

- 1. Dining room floor sinking.*
- 3. No exhaust for dryer in basement.*
- 4. Under stove unfinished.*
- 11. Window sill off level.*
- 12. Cracks in tile in laundry room."*

The tenant stated that he repaired item number 4 at a cost of \$413.60. In the absence of receipts I award the tenant half that amount for the sum of \$206.80.

Regarding the leak in the upstairs bathroom tub; the tenant stated that water leaked through an electrical fixture, onto the wet floor where his son slipped and fell.

The tenant notified the landlord of the problem; this was an emergency and it should have been repaired promptly; the landlord failed to take immediate action, as evidenced by the tenant's testimony that it was not fixed by the end of the tenancy, and that he continued to worry about related electrical concerns. I find that the tenant lost a portion of his right to the full benefit of the tenancy and I grant the tenant \$600.00 for the loss of quiet enjoyment.

Section 28 of the *Residential Tenancy Act* provides in part that a tenant is entitled to quiet enjoyment including, but not limited to; reasonable privacy and freedom from unreasonable disturbance. The tenant has not proven that the non-emergency issues were brought to the landlord's attention as they occurred. The tenant stated that he did not disagree with the landlord's evidence, only with the timing of certain events. I find that the tenant's retroactive claim of lack of quiet enjoyment for a rent abatement of 37% was not sufficiently proven and I dismiss that portion of his claim.

Conclusion

The landlord established a claim of \$8034.56. I authorize the landlord to retain the tenant's \$1550.00 security deposit for a balance owing of \$6484.56.

Under his application, the tenant has established a claim for \$1568.23.

Pursuant to Section 72 of the Act, I set off the amount awarded to the tenant against the amount awarded to the landlord, and I grant the landlord a Monetary Order for the balance of \$4916.33.

Since the parties were partially successful in their respective application, I decline to make an order regarding the filing fees.

This Order may be registered in the Small Claims 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: February 04, 2011.

Residential Tenancy Branch