

DECISION

Dispute Codes DRI, MNDC, ERP, CNR

Introduction

This hearing was convened by way of conference call to deal with the tenant's application disputing an additional rent increase; for an order cancelling a notice to end tenancy for unpaid rent or utilities; for an order that the landlord make emergency repairs for health or safety reasons; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the conference call hearing, and the landlord company was represented by an agent, who also called a witness. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness on their testimony. All information and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant's dispute of an additional rent increase justified?

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent?

Is the tenant entitled to an order that the landlord make emergency repairs for health or safety reasons?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in October, 2004 and the tenant still resides in the rental unit. Rent in the amount of \$536.00 per month is currently payable in advance on the 1st day of each month. The rental unit is a suite in a townhouse complex. The landlord did not collect a security deposit or pet damage deposit from the tenant.

At the outset of the tenancy, the rent amount was \$500.00 per month. On March 1, 2008 rent was increased to \$520.00 per month, and the tenant was again served in August, 2010 with a notice of rent increase effective December 1, 2010 to \$536.00.

The landlord's agent testified that on January 24, 2011 the tenant paid \$400.00 toward rent. On January 26, 2011 she served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing, by placing it in the tenant's mail box. The notice states that the tenant failed to pay rent in the amount of \$274.00 that was due on January 1, 2011, is dated January 26, 2011 and contains an expected date of vacancy of February 4, 2011. The notice is deemed to have been served 3 days after placing it in the mailbox, or January 29, 2010. The tenant paid the outstanding rent on February 2, 2011, which is within the 5 days provided for in the *Act*, thereby voiding the notice to end tenancy.

The landlord's agent further testified that rent for the month of February was also due, and on the 2nd of February the landlord again issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by placing it in the tenant's mailbox. That notice stated that the tenant failed to pay rent in the amount of \$810.00 that was due on February 1, 2011; is dated February 2, 2011 and contains an expected date of vacancy of February 12, 2011. The landlord did not provide a copy of that notice. The landlord's agent further testified that the tenant is currently in arrears \$536.00 for the month of February.

The tenant testified that he signed a blank cheque in December, 2010 and gave it to the landlord's agent, who filled out the wrong amount on the cheque and it bounced. The tenant wasn't notified right away, and that put him a month behind in his finances.

The tenant further testified that a building inspector and fire marshal visited the unit in January, 2011 and found the sliding glass doors and all windows frozen shut, as well as no sealed windows, and water and black mould building up in between. He stated that the landlord promised to do repairs in 2007. Water runs between the walls, and now mould is growing under the carpet, and under the window casings. Further, the drywall is soft, the support is rotting, and insulation is wet and moldy. The tenant stated that he has 5 baseboard heaters and as a result his hydro has increased. He stated that the only one that works properly is in the family room. He also stated that he feels the unit is a fire trap; that he can't get out, and was promised new windows every year. The tenant requests an order that the landlord complete those repairs as well as a monetary order in the amount of \$500.00 as compensation.

With respect to repairs, the landlord testified that a maintenance person inspected the unit and made a list of repairs. She stated that the windows are frozen to the extent that one cannot see through them, and acknowledged that it will take 4 to 6 weeks for the windows and doors to be replaced. Once that is done, the landlord will attend to other repairs. She further stated that the roof will be repaired in the spring.

Analysis

Firstly, with respect to the tenant's application disputing an additional rent increase, I find that the tenant has failed to establish that the landlord has increased the rent more than permitted under the *Residential Tenancy Act* and regulations. Therefore, that portion of the tenant's application must be dismissed.

I further find that the tenant filed an application for dispute resolution disputing the notice to end the tenancy issued by the landlord within the time provided for in the *Act*. I also find that the landlord wrote the incorrect amount on the cheque, and thereby caused the cheque to be returned for non-sufficient funds. I further find that this has been a long-term tenancy and the landlord also wrote the incorrect amount of rent due on the notice to end tenancy issued on February 2, 2011. I do not have the benefit of a copy of that notice, and therefore find that the landlord has failed to establish that the notice ought to be upheld, and must be cancelled.

I also find that the tenant is entitled to an order that the landlord comply with Section 32 of the *Residential Tenancy Act* by maintaining the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. The tenant is also entitled to an order that the landlord make emergency repairs for health or safety reasons.

I find that the tenant has also established a claim in the amount of \$500.00 as compensation for the last 5 months that the tenancy has been devalued.

Conclusion

For the reasons set out above, I hereby order that the landlord make the following repairs to the unit:

- Replace the windows and doors;
- Replace all electric heaters that are not efficient until such time as the windows and doors are replaced.

I further order that the landlord reimburse the tenant by way of rental deduction the sum of \$500.00 for the last 5 months of the tenancy, being October, 2010 to February, 2011. I further order that the tenant be permitted to deduct the sum of \$100.00 per month for every month commencing April 1, 2011 until the repairs above are completed.

I further order that the notice to end tenancy is cancelled.

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 28, 2011.

Residential Tenancy Branch