



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR RR FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for unpaid rent, as well as for a reduction in rent for repairs, services or facilities agreed upon but not provided. Both the tenant and the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy for unpaid rent valid?
Is the tenant entitled to a reduction in rent?

Background and Evidence

The facts agreed upon by the tenant and the landlord were as follows. The tenancy began on November 1, 2007. On that date, the landlord received a security deposit from the tenant in the amount of \$650. The monthly rent was initially \$1300, but a few months into the tenancy the landlord agreed to reduce the rent to \$1100. In the summer of 2010 the landlord agreed to a further \$100 reduction in rent.

In December 2010 flooding occurred in the basement of the house, and as a result the landlord was willing to forego any rent for December 2010. The landlord and the tenant agreed that it was time for the tenancy to end, and on December 30, 2010 the landlord served the tenant with a two month notice to end tenancy for landlord's use.

The tenant did not pay any rent for January 2011, and on January 21, 2011 the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent. The 10 day notice indicates that the tenant failed to pay rent of \$1000 that was due on December 1, 2010 and also failed to pay utilities of \$1000 after receiving a written demand on January 1, 2011.

The evidence of the tenant was that she did not pay December's rent because the landlord had agreed she did not have to pay rent for December 2010. In the summer of 2010, the tenant and the landlord had discussed how the tenancy would end when the landlord issued a two month notice to end tenancy for landlord's use. At that time, the tenant told the landlord that she would be entitled to one month's free rent, pursuant to the notice, and the landlord could put the \$650 security deposit toward the rent for the other month. The tenant believes that she had an agreement with the landlord that would not require her to pay any rent for January 2011, as the landlord would put the security deposit toward January's rent, and the house was in such a state of disrepair that the tenant would not have to pay anything further for January rent. The tenant submitted photographs of some damage to the rental unit.

The landlord's response was that he had no agreement with the tenant to allow her to apply the security deposit toward rent for January 2011, and he had expected to receive the full rent of \$1000 for January 2011.

Analysis

I find that the 10 day notice to end tenancy for unpaid rent is not valid. The landlord stated in the hearing that he agreed to forego rent for December 2010. Therefore, the landlord could not seek to end the tenancy for the tenant's failure to pay the rent of December 2010.

The landlord and the tenant both gave testimony regarding their agreement that the tenant was not required to pay any rent for December 2010. I find that the tenant is not required to pay any rent for December 2010.

In regard to the rent owed for January 2011, I find as follows. A tenant cannot apply a security deposit toward rent unless the landlord gives written consent. The landlord did not give written consent, and therefore the tenant cannot apply the security deposit toward rent for January 2011. I find that the tenant was compensated in full for the flooding of the basement in December 2010, and that she is not entitled to any further reduction of rent. The tenant owes \$1000 for January 2011. However, as the tenant's application was successful, she is entitled to recovery of the \$50 filing fee for the cost of her application.

Conclusion

The 10 day notice to end tenancy for unpaid rent is cancelled. The tenant is entitled to withhold all of her rent for December 2010. The tenant may withhold \$50 from her January 2011 rent.

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 10, 2011.

Residential Tenancy Branch