



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, FF, OPR, MNR, MNDC

Introduction

This hearing was convened in response to an application by the Tenant and a cross application by the Landlord.

The Tenant applied for dispute for:

1. An Order Cancelling a Notice to End Tenancy for unpaid rent (the "Notice") – Section 46;
2. A Monetary Order for the cost of emergency repairs – Section 67; and
3. An Order to recover the filing fee for this application - Section 72

The Landlord applied for dispute resolution for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / compensation for damage - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to end Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 15, 2010. Rent in the amount of \$1,950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord

collected a security deposit from the Tenant in the amount of \$975.00. The Tenant failed to pay rent for the month of May 2011 and on May 15, 2011 the Landlord served the Tenant with a notice by posting the notice on the door.

The Tenant states and the Landlord agrees that on May 22, 2011, the Tenant attempted to pay the Landlord the rent but that the Landlord refused to accept the money.

The Landlord states that on May 23, 2011, she notified the Tenant that she was prepared to accept the rent money but that the Tenant did not respond. The Tenant states that he repeatedly attempted to pay the rent but the Landlord continued to refuse. The Landlord says that she refused to accept the rent because she was a new Landlord and was not aware of her obligations.

The Landlord states that the Tenant failed to pay rent for June and that on June 2, 2011 she served the Tenant with another 10 day Notice by posting it on the door. The Tenant states that the Landlord had been given a cheque for June's rent and that following the Notice he repeatedly attempted to give her the rent in cash for both May and June 2011. The Tenant states that on June 7, 2011 he again tried to give her the rent when they served her with their application and notice of hearing in relation to the May rent dispute. The Tenant states and the Landlord agrees that she would not accept cash or a cheque and demanded a money order. The Landlord states that she refused the rent because she was nervous about accepting over \$4,000.00 in cash and had no receipts to issue the Tenant.

The Tenant states that when they first inspected the house and signed the lease on April 9, 2011, the gas fireplace, furnace, stove range hood and fridge required repair. The Tenant states that the move-in report only notes a problem with the gas fireplace as the Landlord refused to note the other items. The Tenant states that upon moving into the unit, that they also became aware that the garbuerator leaked, the shower faucet leaked and the kitchen sink was missing the silicon around it.

The Tenant states that at the time they signed the lease the Landlord orally agreed that the Tenant could make the repairs identified at the inspection for a reduction in their rent and to let her know when the repairs were completed. The Tenant states that he is an A level licensed gas fitter who owns a heating and air conditioning company and that he informed the Landlord that he would charge her as a regular customer. The Tenant provided a witness letter from the second Tenant, his wife, confirming the Landlord's agreement.

The Tenant states that he used a gas detector to locate the leak in the furnace and completed the repairs as agreed. The Tenant states that he also made repairs to the garbuerator, shower and kitchen sink. The Tenant states that he met with the Landlord on May 15, 2011, presented her with the invoice and expected to discuss the agreement for the reduced rent. The Landlord refused to acknowledge the agreement and refused to discuss the rental reduction for any of the repairs. The Tenant states that the Landlord belittled the Tenant at this meeting and threatened retaliation if the Tenant pushed the matter. Following this meeting, the Landlord posted the first Notice to end Tenancy.

The Landlord states that she did not agree to have the Tenant make any repairs and that none of the repairs undertaken by the Tenant were emergency repairs. The Landlord states that at the time of the inspection the gas fireplace pilot light would not operate. The Landlord states that there was no smell coming from the furnace, that it had been purchased new in June 2009 and repaired in September 2010 by a plumbing and heating company. The Landlord states that the Tenant had a 24 hour number to reach her to inform her of emergency repairs and that had the Tenant informed her of the repairs needed, they would have been completed by her own contractors.

The Landlord states that she intended to make repairs to the items identified at the time of the inspection and states that maybe she would have had the repairs done in about two months. The Landlord states that the Tenant did not fix the fridge gasket as noted

in the invoice, overcharged her, did not supply receipts for the parts and included a charge for a service call.

The Tenant agrees that the gasket for the fridge had not been replaced but that he serviced the fridge and was expecting to discuss this with the Landlord at the time of their meeting. He also expected to discuss and negotiate the repairs done that the Landlord had not known about.

Analysis

Section 46 of the Act provides that following receipt of a notice, if a tenant pays the rent, the notice has no effect. Given the undisputed evidence of the Parties that the Tenant repeatedly attempted to pay the rent within five days of receiving both notices, I find that both notices have no effect and I therefore cancel the notices for both May and June. I direct the Tenant to pay the rent for both May and June 2011 immediately and I direct the Landlord to accept the Tenants' payment of rent for May and June 2011.

Although the Landlord disputes any agreement with the Tenant to do repairs, I note that the move-in condition report notes a non-working gas fireplace that is to be fixed at the start of the tenancy and I also note that the fridge problems are identified. Although the move-in report does not identify problems with the furnace or stove, I accept the Tenant's evidence that the Landlord refused to mark these items on the report. I also prefer the Tenant's evidence that an oral agreement existed for the Tenant to complete these repairs and to have costs for the repairs deducted from the rent payable. As such, I find on a balance of probabilities that the Tenant is entitled to reimbursement of his costs for the repairs to the gas fireplace, furnace, and stove range hood in the amount of **\$508.48**. This amount is calculated based on 4 hours of labour at \$85.00 per hour plus parts in the amount of \$114.00 plus HST in the amount of \$54.48. As the Tenant did not have to travel to make the repairs, I find that the claim for the service call is unreasonable and make no award in relation to that amount claimed.

Section 33 of the Act sets out the definition of “emergency repairs”. These repairs must be urgent and necessary for the health or safety of anyone and includes those repairs made for the purpose of repairing the primary heating system. Although the Tenant claims an amount for repairing the fridge, given the undisputed evidence that these repairs were not completed, I find that the Tenant has not substantiated this repair cost and dismiss this part of the Tenant’s claim. In relation to the claims for reimbursement of costs to repair the garbuerator, shower faucet leaked and kitchen sink, I find that none of these repairs were emergency repairs as contemplated by the Act. Given the undisputed evidence that no agreement was in place for the Tenant to complete repairs to these items, I find that the Tenant has not substantiated any right to make these repairs for reimbursement from the Landlord and dismiss this part of the Tenant’s claim.

As the Tenant has been successful with his claim, I find that he is entitled to recovery of the filing fee of \$50.00 for a total monetary award of **\$558.48**. I direct the Tenant to reduce future rent payable to the Landlord by this amount.

Conclusion

The 10 day Notice to End Tenancy issued in May and June 2011 is cancelled and is of no force or effect. The Tenant is directed to pay rent for May and June 2011 forthwith.

I Order the Tenant to reduce future rent payable to the Landlord by the amount of \$558.48.

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: June 23, 2011.

Residential Tenancy Branch