



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNR ERP FF OPR MNR

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy, as well as for monetary compensation and an order for emergency repairs. The landlord applied for an order of possession and monetary compensation. The tenant, a witness for the tenant and two landlords participated in the teleconference hearing.

The tenant submitted documentary and written evidence that he did not serve on the landlord. I therefore did not admit or consider that evidence.

The tenant ticked off the box on his application that indicated he was applying for monetary compensation for the cost of emergency repairs; however, based on the tenant's testimony I am satisfied that this was a clerical error on his part, and that the tenant's intention was to apply for monetary compensation for loss under the Act. I therefore amend the tenant's application to claim monetary compensation for loss under the Act, rather than for the cost of emergency repairs.

At the outset of the hearing, parties confirmed that the landlord had not at any time issued a proper notice to end tenancy for unpaid rent. I therefore dismissed the portion of the tenant's application regarding cancelling a notice to end tenancy, as well as the portion of the landlord's application regarding an order of possession.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation for unpaid rent?

Should the landlord be ordered to carry out emergency repairs?

Background and Evidence

The tenancy began on June 1, 2011, with monthly rent in the amount of \$1000. The tenants paid their full rent of \$1000 for June 2011, but only paid \$500 for July 2011. The landlord and the tenants had a verbal agreement regarding some work that the tenants would do on the rental unit, and the landlord gave the tenant \$100 toward the cost of the work.

The evidence of the tenants was as follows.

The tenants wanted to start work on the rental unit before June 1, 2011 because the bathroom was not useable and unsanitary, and they wanted the unit to be liveable by the first of the month. The landlord and tenant agreed that the tenant would do the work if the landlord would pay for any structural expenses.

The tenants were unable to start repairs early because there was a previous outstanding bill in the landlord's name. The landlord told the tenants he could not pay the outstanding bill until the tenants paid their first month's rent. The power was not hooked up until June 4, 2011. The tenants were not able to live in the house until June 16, 2011, because they had to do repairs as well as haul away piles of garbage that the landlord had left behind. The tenant submitted that he put in at least \$1200 in work.

At the beginning of July 2011, the tenant met with the landlord, and paid him \$500 toward rent for July. The tenant's testimony was that the landlord agreed to the deduction of \$500 from July's rent in exchange for structural expenses, as previously agreed, and the tenant and the landlord shook hands. A witness for the tenant testified that he heard this verbal agreement between the tenant and the landlord, and saw them shake hands. On questioning by the landlord, the witness later admitted that he was sitting in the car in the driveway while the tenant and the landlord spoke in the landlord's doorway, but the witness heard what was said.

The tenant submitted that the landlord's fiancée disagreed with the deal, and the landlord then gave the tenant a note stating that the tenant owed the balance of \$500 for July rent. The tenant has claimed \$500 in monetary compensation for not being able to move in to the rental unit until June 16, 2011, as well as for incurring costs for repairs and hauling away the landlord's garbage.

In regard to the claim for emergency repairs, the tenant stated that the toilet is leaking sewage into the basement, there is other flooding in the basement, and there are

problems with the laundry. The tenant's witness stated that while he attempted to repair the toilet, it is beyond his abilities and is a job for a real plumber with real tools. The tenant seeks an order for emergency repairs for these items.

The evidence of the landlord was as follows.

The landlord only agreed to the \$100 that he gave the tenants toward the cost of supplies. The tenant spent far more money on parts and supplies than the landlord would have paid, and he should not be responsible for those costs. There was nothing leaking when the landlord lived in the house, nothing happened until the tenant started taking things apart, so the landlord should not have to fix it. The landlord gave the tenant a pump to deal with the water in the basement. There were only a few bags of garbage left behind, and the tenant agreed to take it away along with the garbage that resulted from the work he was doing. The landlord has claimed \$500 in unpaid rent for July 2011.

Analysis

In considering all of the evidence, I find as follows.

In regard to July's rent, the tenant and the landlord have provided disputed verbal testimony as to their agreement about repair costs. I do not find it likely that the tenant's witness was able to hear the discussion between the tenant and the landlord while he was sitting in the car in the driveway. In the absence of clear evidence of an agreement between the tenant and the landlord, I find that the tenant owes the landlord \$500 in outstanding rent for July 2011.

In regard to the tenant's monetary claim, I find that the tenant is entitled to \$500 in compensation for not being able to move into the rental unit until June 16, 2011. A landlord is required to ensure that the rental unit is in a liveable condition at the outset of the tenancy, and I find that the landlord did not do so in this case. The landlord acknowledged that they did not arrange for the power to be hooked up until after the tenants paid the rent, and I accept the testimony of the tenant that there was no power until June 4, 2011. The landlord acknowledged that he had left some garbage behind. Further, I find that the landlord acknowledged that some repairs in the bathroom were required, as he gave the tenant \$100 toward the cost of those repairs.

In regard to the tenant's application for emergency repairs, I find that orders for repairs are required. The bathroom was in need of repairs at the outset of the tenancy. Whether the tenant or another person representing the landlord carried out those repairs, the

problem with the toilet would most likely have occurred. It is unacceptable for the landlord to leave the toilet leaking sewage.

The landlord acknowledged the flooding in the basement. If water remains in the basement, the landlord must take immediate steps to address the problem.

The tenant provided limited information regarding the problems with the laundry. I therefore decline to order repairs to the laundry at this time. It is open to the tenant to provide the landlord with a written request for repairs regarding the laundry.

Conclusion

The landlord is entitled to \$500 in unpaid rent for July 2011. This amount is satisfied in full with the \$500 compensation to which the tenant is entitled.

I order the landlord to immediately repair the toilet and bring the basement to a condition that meets health and safety standards.

As the tenant's application was partly successful, he is entitled to partial recovery of the filing fee for the cost of his application, in the amount of \$25. The tenant may withhold this amount from his next month's 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: August 5, 2011.

Residential Tenancy Branch