

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order requiring the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that one of the landlords handed him a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on August 31, 2011. The landlord who attended the hearing (the landlord) confirmed that the landlords received a copy of the tenant's dispute resolution hearing package sent by registered mail by the tenant on September 6, 2011.

The tenant testified that he had not received the landlord's evidence before this hearing. The landlord said that he sent this written evidence on September 25, 2011 by regular mail. The Residential Tenancy Branch (RTB) received the landlords' written evidence on September 26, 2011. The landlords' written evidence was comprised of copies of plumbing bills and a copy of the tenant's August 2011 rent cheque which the parties agreed was non-negotiable when the tenant cancelled payment on this cheque. As the written evidence submitted by the landlord was not in dispute and the landlord's written evidence was considered served in advance of this hearing, I proceeded with this hearing. I noted that the landlords' written evidence is not in dispute and has little bearing on the tenant's application for dispute resolution.

At the hearing, the landlord confirmed that the landlords have not made any separate application for dispute resolution regarding this tenancy. The landlord made an oral request to end this tenancy and for an Order of Possession if the tenant's application for dispute resolution were dismissed. Since neither party had entered into written evidence a copy of the landlords' 10 Day Notice, I requested that the landlords send a

fax of that Notice to the RTB within 24 hours of this hearing. The landlord said that he would fax this document to the RTB shortly after this hearing.

Issues(s) to be Decided

Should the tenant's application to cancel the landlord's 10 Day Notice be allowed? Should the landlord's oral request for an Order of Possession be allowed? Is the tenant entitled to a monetary award? Should order(s) be issued to the landlord for emergency repairs or for any other reason? Is the tenant entitled to recover his filing fee from the landlords?

Background and Evidence

This month-to-month tenancy began on March 1, 2011. Monthly rent is set at \$1,800.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$900.00 security deposit.

The landlord testified that the 10 Day Notice was issued to the tenant when the tenant did not pay his August 2011 rent. The parties agreed that the tenant paid \$400.00 in cash for his July 2011 rent. The tenant testified that the landlord who was not in attendance at this hearing agreed to allow the tenant an \$800.00 credit towards his July 2011 rent for work that the tenant undertook to repair drywall and the ceiling in this upper floor rental unit. The landlord testified that the tenant has not paid the remaining \$600.00 of his July 2011 rent, nor any of his August or September 2011 rent.

The tenant testified that the landlord has failed to provide him with adequate plumbing and heating during this tenancy. Although some repairs were conducted by the landlords' plumber, the tenant and his witness, his ex-wife, testified that these repairs only remedied that part of the plumbing problem that was affecting the lower suite. They said that the tenant has not had proper access to water during this tenancy, requiring them to use shower and sometimes toilet facilities elsewhere. The tenant and his witness testified that there are ongoing problems with leaking pipes in this rental unit.

The tenant provided the names and phone numbers of two additional witnesses who he claimed would provide similar oral testimony regarding the ongoing problems he has encountered to try to obtain proper plumbing and access to water in this rental unit. The landlord said that there was no need for these witnesses to provide their oral testimony as he was not disputing that they would enter oral evidence similar to that provided by the tenant and the tenant's witness who did give testimony.

The tenant did not deny the landlord's claim that he has not paid rent for August or September, but maintained that the landlords' failure to address the plumbing problems needed to be taken care of before he will pay the outstanding rent. The tenant said that access to water is essential to him because he keeps livestock on this property. He said that if the landlord were to repair the rental unit, he would pay the outstanding rent.

The tenant provided no written evidence, nor did he provide any copies of invoices, receipts or estimates of any losses that he incurred in support of his request for a monetary award of \$16,000.00.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Analysis – Tenant's Application to Cancel Notice to End Tenancy

The parties agreed that the tenant has not paid any of his August 2011 rent. In addition, the parties provided oral testimony that at least \$600.00 of the tenant's July 2011 rent remains unpaid. Since the parties agreed that the tenant has not paid this outstanding rent that would have been owing at the time of the issuance of the landlords' 10 Day Notice, I find that the tenant had no authorization to discontinue paying rent. The tenant also admitted that he has not paid rent for September or October 2011.

Although the tenant maintained that the landlord was not providing adequate services to the rental unit, this does not allow a tenant to withhold rent without first obtaining authorization through an order or decision issued by the RTB. Without authorization to withhold rent, a tenant must continue to abide by the terms of his tenancy agreement.

At the hearing, I noted that neither party entered into written evidence a copy of the 10 Day Notice. I advised the landlord that I would only agree to his oral request for an Order of Possession on the basis of the dismissal of the 10 Day Notice if he were to fax the RTB a copy of the 10 Day Notice within 24 hours. The landlord assured me that he would fax a copy of this Notice to my attention at the RTB shortly after the end of the hearing. At the hearing, I informed the parties that if the landlords' 10 Day Notice was in order, I would be issuing a 7 Day Order of Possession to the landlord. Although I gave

the landlord more than 24 hours to send this document to the RTB, the landlord did not fax a copy of the 10 Day Notice to the RTB within the 24 hour time frame identified during the hearing.

Based on the undisputed oral testimony of the parties, I dismiss the tenant's application to cancel the 10 Day Notice because the tenant had no authority to arbitrarily withhold paying rent for this tenancy.

Without a copy of the 10 Day Notice, I am in no position to consider the validity of the landlords' 10 Day Notice and whether an Order of Possession should be issued on the basis of that Notice. Despite giving the landlord an additional opportunity to forward this essential document to support his oral request, the landlord did not fax the 10 Day Notice to the RTB. Under these circumstances, I am unable to end this tenancy on the basis of the 10 Day Notice issued on August 31, 2011 or to issue an Order of Possession. The landlords will need to submit a separate application for dispute resolution in order to obtain an end to this tenancy and an Order of Possession, at which time they will need to provide a copy of any notice to end tenancy upon which they intend to rely.

Analysis – Tenant's Application for a Monetary Order

The tenant submitted no written evidence to support his application for a monetary award of \$16,000.00 for losses arising out of this tenancy. He did not submit any written requests to the landlords to conduct further repairs. The landlord provided written evidence to demonstrate that he has incurred costs to obtain a series of plumbing repairs to this rental property. These repairs extended over a lengthy portion of this tenancy from May until August 2011. If the repairs undertaken did not result in satisfactory provision of plumbing services to this rental unit, I would expect that the tenant would have sent something to the landlords. Rather, it would appear that the tenant discontinued paying rent until such time as he was satisfied with the landlords' provision of services and facilities for this tenancy.

I find little evidence to support the tenant's claim for a monetary award for compensation for loss under the *Act*, *Regulation* or tenancy agreement. The tenant did not provide any receipts, invoices or estimates that would demonstrate loss that entitles him to compensation from the landlord. For these reasons, I dismiss the tenant's application for a monetary award.

Analysis – Tenant's Application for Orders regarding Emergency Repairs

Although the tenant's application has been dismissed, this tenancy is continuing due to the landlord's failure to provide the necessary document to consider his oral request to end this tenancy.

The parties presented very different oral testimony regarding the plumbing concerns raised by the tenants. The tenant and his witness gave oral evidence that the pipes in this rental unit remain problematic and no proper repairs have been conducted. The landlord cited the plumbing repair bills to demonstrate that the landlords have been attentive to the tenant's concerns and have incurred considerable plumbing repair costs during this tenancy. The tenant and his witness maintained that most of these bills apply to the lower rental unit in this rental property.

As this tenancy will continue at least for the short term, I find that measures should be taken to ensure that any plumbing and leakage problems that exist are repaired. For that reason, I order the landlord to retain an accredited plumber to inspect the tenant's rental unit within 14 days of this decision. I order the landlord to give the tenant a copy of any report or invoice that the accredited plumber produces. Following this inspection, I order the landlord to conduct whatever repairs are necessary to provide an adequate and safe supply of water and plumbing services to this rental unit. If repairs required by the plumbing in the rental unit are necessary and are not completed by November 1, 2011, I allow the tenant to reduce his monthly rent by \$500.00 per month until such time as the repairs are completed.

Since the tenant has only been successful in part of his application for dispute resolution, I find that the tenant is responsible for his filing fee for this application.

Conclusion

I dismiss the tenant's application to cancel the 10 Day Notice.

Since no copy of the landlord's 10 Day Notice was provided and I am uncertain as to whether the landlord's 10 Day Notice is valid and in the proper form, this tenancy continues.

I dismiss the tenant's application for a monetary Order for loss or damage in its entirety without leave to reapply.

I dismiss the tenant's application to recover his filing fee from the landlords.

I issue an order to the landlord to retain an accredited plumber to inspect the tenant's rental unit within 14 days of this decision. I order the landlord to provide the tenant with

a copy of any report or invoice that the accredited plumber produces. Following this inspection, I order the landlord to conduct whatever repairs are necessary to provide an adequate and safe supply of water and plumbing services to this rental unit. If repairs required by the plumbing in the rental unit are necessary and are not completed by November 1, 2011, I order that the tenant be allowed to reduce his monthly rent by \$500.00 per month until such time as the repairs are completed. Once the repairs are completed, the next monthly rent reverts to \$1,800.00, as per the terms of the parties' residential tenancy agreement.

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*.