



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the landlord-OPR, MNR, FF
For the tenant-CNR, FF, RP, RR

Introduction

This hearing dealt with the cross applications of the parties.

The landlord applied for an order of possession, for a monetary order for unpaid rent and to recover the filing fee.

The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, for an order allowing a reduction in rent, for an order requiring the landlord to make repairs and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, to make submissions to me and respond each to the other. Additionally the parties each acknowledged receipt of the other's evidence.

Preliminary Issue:

The parties acknowledge that the tenants vacated the rental unit on October 16, 2011. As a result, the parties' applications were amended to exclude their requests for enforcement of the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") or the cancellation of the Notice.

Issue(s) to be Decided

Have the tenants breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the landlord to an order for unpaid rent and to recover the filing fee?

Are the tenants entitled to an order requiring the landlord to complete repairs, for an order allowing a rent reduction and to recover the filing fee?

Background and Evidence

This tenancy began on September 1, 2010, ended on October 16, 2011, when the tenants vacated the rental unit, monthly rent was \$1,400.00 and the tenants paid a security deposit of \$700.00 on August 24, 2010. The tenancy agreement did not indicate whether this tenancy was for a fixed term or month to month.

The tenant's rental unit was on the lower level and the landlord lived in the same residential property, above the tenant. There was an additional rental unit in the residential property.

Landlord's Application:

The landlord's application sought a monetary order in the amount of \$2,800.00, which is unpaid rent for September and October, 2011.

In support of her application, the landlord stated that the tenant failed to pay rent in September, which resulted in her issuing the tenant a 10 Day Notice to End Tenancy for Unpaid Rent on September 9, 2011, and again in October, the landlord did not receive monthly rent.

The landlord's relevant evidence included the tenancy agreement, the Notice, a note from the tenant of his intent to pay rent on September 7, 2011, a notice from the tenant dated September 8, 2011, of his intent to vacate the rental unit by October 15, 2011, communication from the tenant after receiving the landlord's dispute resolution hearing package, copies of email communication between the landlord and a restoration company, an extermination company reports and invoices, a notice sent by the landlord to the tenant informing him that renovations to the rental unit were to start on October 3, 2011.

In response, the tenant did not dispute that rent for September and October was unpaid; however the tenant pointed out that he vacated the rental unit on October 16, 2011.

Tenant's Application

As the tenancy has ended, consideration of the tenant's request to order the landlord to make repairs was no longer required.

In support of his request for a rent reduction, which in this case would be for a retroactive rent reduction, the tenant testified that there were problems from the

beginning of the tenancy creating stress for him, but more recently, a problem with rats occurred in the rental unit.

The tenant submitted that he began to notice rats and notified the landlord immediately, after which the landlord contacted an extermination company.

The tenant submitted that once the rat problem had been corrected in his rental unit, the rats remained in the upper rental unit, where the landlord lived, but that the repairs were not completed in his rental unit as result.

The tenant claimed that the use of his rental unit was diminished the last two months of the tenancy.

The tenant stated that the landlord has been making excessive noise the last two weeks of the tenancy.

The tenant's relevant evidence included a written summary, a notice to vacate the rental unit by October 15, 2011, pictures of the damaged ceiling in his kitchen, and written communication to the landlord.

In response, the landlord submitted that on June 23, 2011, she became aware of a possible mouse problem, and set traps for the mice.

On July 4, 2011, the landlord's washer started leaking, resulting in a call to the plumber, who informed the landlord that a rat had chewed through the plastic pipes.

As shown by the landlord's evidence, on July 5, 2011, an extermination company attended the rental unit, setting traps.

On July 27, 2011, the extermination company followed up and found rat activity in the ceiling and new traps were set.

On August 10, the pest control company in a follow up found more evidence of rats and set new traps and poison.

On August 20, the extermination company followed-up and found no evidence of rats.

On September 7, the extermination company followed up, found no rats and picked up the traps.

On September 14, the extermination company found maggots, which prevented the restoration company from commencing repair, as instructed by the landlord's insurance company.

On September 22, the extermination company gave the approval to proceed with renovations as there was no new evidence of rats or maggots.

The landlord informed the restoration company of the "all-clear" in an email on September 22, 2011, and the restoration company, in an email response of September 26, 2011, confirmed that they had been unable to begin work until the rodent problem was cleared.

In that email, work authorization was discussed and in an email of September 26, 2011, the tenant was informed of the repair work to take place.

The landlord testified that her insurance company would not approve the restoration company to begin work until all evidence of rats and maggots were no longer present.

Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on both parties to prove damage or loss.

Landlord's Application:

In the absence of a specific fixed term listed on the tenancy agreement and of a day of the month in which rent is due, I find the testimony of the parties indicates that the

tenancy was established on a month to month basis and that rent was due on the 1st day of each month.

Section 45 (1) of the Residential Tenancy Act requires a tenant to give notice to end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that rent was owed for the month of September, 2011 and that the tenants failed to pay rent for that month, as confirmed by the tenant.

Based on the testimony and evidence, I find that the tenants provided insufficient notice to the landlord of their intent to vacate when it was given on September 8, 2011, and therefore failed to comply with Section 45 of the Act.

I therefore find that the landlord has established a claim for **\$2,800.00** for unpaid rent for September and October 2011.

I find the landlord's application had merit and I therefore allow the landlord recovery of the filing fee.

I **grant** the landlord a monetary order under section 67 of the Act for **\$2,850.00**, comprised of unpaid rent of \$2,800.00 and the filing fee of \$50.00.

I am enclosing a Monetary Order for \$2,850.00 with the landlord's Decision. This Order is a **legally binding, final Order**, and may be filed in the Provincial Court (Small Claims) should the tenants fail to comply with this Monetary Order.

Tenants' Application:

Section 32 of the Act requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant.

The tenant testified that he informed the landlord approximately 2 months prior to the end of the tenancy that he had problems with rodents. Nonetheless the testimony of the landlord and the evidence suggests that the problem was identified to the landlord prior to that, in June, and that she took immediate steps to resolve the rodent problem.

Based on the testimony of both parties, I find the landlord has taken immediate and comprehensive steps to remediate the rodent problem and that she was unable to complete the required repairs until authorized by the extermination company and her insurance company. Immediately after receiving the authorization, I find the landlord contacted the restoration company to begin work.

I therefore find that any damage or loss alleged by the tenants to exist does not result from the landlord's violation of the *Act*, regulation or tenancy agreement. As a result, I find the tenants have failed to provide sufficient evidence to support their claim for compensation.

I therefore dismiss the tenants' application in its entirety.

Conclusion

The landlord is granted a monetary order in the amount of \$2,850.00.

The tenant's application is dismissed in its entirety.

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: October 18, 2011.

Residential Tenancy Branch