



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNR, OLC, RR

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel 2 Notices to End Tenancy and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

On November 2, 2011 the tenant was served with 2 – 10 day Notices to End Tenancy for non-payment of rent.

On November 4, 2011 the tenant filed a dispute of those notices.

The tenant testified that:

- She put a stop payment on the August 2011 rent cheque because the landlord has failed to respond to her request for repairs and due to harassment.
- The other reason she put a stop payment on the August 2011 rent cheque was because the landlord had not cashed it by September 15, 2011.
- She also withheld the November 2011 rent, because she had a major leak under the bathroom sink and she kept the money so she could get a plumber in.
- She had a plumber come in on November 4, 2011 and then submitted the invoice to the landlord along with a cheque for the November rent, less the Plumbing invoice, and less money for her time to deal with the plumbing issue.
- She is asking that both the Notices to End tenancy be cancelled, due to the landlord's failure to deal with repair issued and harassment issues.

The landlord testified that:

- The tenant was given the Notices to End Tenancy because her August 2011 rent cheque was not honoured by the bank and she had not paid her November 2011 rent.
- The tenant has still not replaced the August 2011 rent, and has only sent a post dated cheque for a portion of the November 2011 rent.
- They have not attempted to cash the Cheque as they do not want the tenancy to continue.
- They ask that the Notices be upheld and that an Order of Possession be issued.

Analysis

The tenant did not have the right to withhold rent for August 2011 or for November 2011, without first getting an Order from a Dispute Resolution Officer allowing her to do so.

The tenant does have the right to deduct the cost of emergency repairs under specific circumstances, however at the time that she withheld the rent; no emergency repairs had even been done.

By withholding rent without the authority to do so the tenant has put her tenancy at risk, and the landlord had every right to serve her with the Notices to End Tenancy.

Therefore it is my decision that I will not set aside either of the Notices to End Tenancy and this tenancy ends pursuant to those notices.

Conclusion

The request to cancel the 2 Notices to End Tenancy is dismissed and I have issued an Order of Possession to the landlord for 2 days after service on the tenants.

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: November 23, 2011.

Residential Tenancy Branch