



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, CNR, RR, O

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Landlord applied on December 5, 2011 for:

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

The Tenant applied on December 1, 2011 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. An Order allowing more time to make an application to cancel a Notice to End Tenancy – Section 66;
3. A Monetary Order for the cost of emergency repairs – Section 67;
4. A Monetary Order for compensation or loss - Section 67;
5. An Order allowing a Tenant to reduce rent for repairs agreed upon but not provided - Section 65; and
6. Other.

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

Preliminary Matter

Noting that a second person was identified on the application as a Tenant, and noting that this person was only identified by a last name, the Landlord clarified that this named person is a person who moved into the unit with the Tenant. The Landlord states that this first name of this person is not known and that the tenancy agreement between the Landlord and the Tenant does not name this person as a tenant. The Tenant and this person both state that the person is not residing with the Tenant but has been in the unit on a temporary basis to assist the Tenant with a rodent infestation that

is the subject of this dispute. Given that this person is not a tenant under the tenancy agreement, I amend the application to remove this person's name.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to reduce the rent for repairs agreed upon but not provided?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy began on January 30, 2011. Rent in the amount of \$600.00 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 \$300.00. On November 7, 2011, the Landlord served the Tenant with a Notice to End Tenancy for Unpaid rent. The Landlord states that the amount noted as unpaid rent in the Notice is an amount that relates to rent and security deposit payable for the Tenant's friend, the person noted above under preliminary matter, to live in the unit with the Tenant. The Landlord confirms that a tenancy agreement exists between the Tenant and the Landlord but that the Landlord does not have a copy of the tenancy agreement and does not know whether the tenancy agreement provides for an increase of rent and security deposit payable where an additional occupant moves into the unit. The Landlord confirms that the rental amount payable as per the tenancy agreement was paid by the Tenant for November 2011.

Tenant states that at the beginning of the tenancy, mice were in the unit and the Landlord was informed however the Landlord did nothing about the problem. The Tenant states that she then attempted to rid the mice herself. The Tenant states that she was in the hospital from mid August to mid October 2011 due to blood poisoning that she believes was caused by the rodent infestation.

The Tenant states that upon returning home, rats had now taken over the unit leaving feces and urine on her furniture. The Tenant's Witness states that the rats had chewed two holes from the exterior of the unit into the interior. The Tenant states that she informed the Landlord who at first denied any problem but later brought rat traps and poison and instructed the Tenant to place the traps and look after the problem. The Tenant states that she paid friends \$600.00 to clean and sterilize the unit and to remove damaged furnishings. The Tenant states that the Landlord did not return to follow-up on the rodents and otherwise blamed the Tenant for the infestation. The Tenant states that

previous tenants informed her that the rats existed in the unit and that the Landlord refused to take any action. The Tenant states that the rats are still coming into the unit. The Tenant states that while she would prefer to move out of the unit, her options for such a move are limited due to financial costs of a move.

The Landlord denies that the Tenant was told to correct the rodent problem herself and states that he did take action on the rat infestation by bringing rat traps, setting them and poison out in the unit. The Landlord does not dispute that no repairs were made to the holes and states that the holes were left uncovered in order for the rodents to exit the unit where some of the traps were laid. The Landlord states that the Tenants are to blame for the problem as they have garbage in the unit and furnishings, including a sofa, outside the unit. The Landlord clarified that the photos of the unit provided as evidence for this dispute are photos of the unit from the previous tenancy. Although offered an opportunity, the Landlord made no submissions on the amount of damages claimed by the Tenant.

Analysis

Given the undisputed evidence of the Landlord, I find that the rent for November 2011 was paid in full and on time by the Tenant. Accordingly, I find the Notice to be invalid and that the tenancy continues. As the Notice is not valid, I dismiss the Landlord's application and I dismiss the Tenant's application in relation to a cancelation of the Notice.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. Without determining whether the rodent infestation indicate the requirement for emergency repairs, and given the undisputed evidence of the Parties that rodents entered the unit, damaged the belongings of the Tenant, and possibly caused the medical problems of the Tenant, I find that by not providing any follow-up to the traps and poison and by not repairing the exterior holes to the unit, the Landlord failed to maintain the unit as required by the Act. I find therefore that the Tenant is entitled to the amount of \$1,000.00. As the Tenant has indicated that the tenancy may soon end, I decline to make an order for the reduction of rent and provide the Tenant with a monetary order for the entitlement amount.

Conclusion

The Landlord's application is dismissed and the tenancy continues. I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,000.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court. 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: December 15, 2011.

Residential Tenancy Branch