



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR; MNR; FF

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the "Notice") issued November 6, 2011; a Monetary Order for the cost of emergency repairs; and to recover the cost of the filing fee from the Landlord.

Both parties gave affirmed testimony at the Hearing.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents by registered mail sent November 9, 2011. The Tenant provided the tracking number in evidence.

Background and Evidence

The parties agreed on the following facts:

- This tenancy began in November, 2009.
- There is no written tenancy agreement between the parties.
- Monthly rent is \$500.00, due on the first day of each month.
- On May 28, 2011, the Tenant paid the Landlord \$2,500.00 as rent for the months of June to October, 2011.
- The Tenant did not pay rent for the month of November, 2011.

The Tenant gave the following affirmed testimony:

The Tenant stated that he was served with the Notice on November 9, 2011.

The Tenant testified that he received a settlement for a long term injury in the early summer of 2011. The Tenant testified that the septic tank at the rental property failed in June of 2011, and he called the Landlord to come and fix it, but the Landlord refused to do so. The Tenant testified that he called someone else to come and clean up and fix the septic system. He stated that he and the Landlord had an agreement that he would attend to repairing the septic field and in return the Tenant would not have to pay rent for the months of November and December, 2011 and January, 2012. The Tenant stated that he paid \$1,500.00 to a subcontractor, who provided him an invoice. The

Tenant provided a copy of the invoice in evidence. The Tenant also provided a copy of an invoice for the cost of pumping out the tank in the amount of \$442.40. The Tenant stated that this formed part of the subcontractor's bill in the amount of \$1,500.00.

The Tenant also provided a copy of a written statement from the subcontractor, stating that the sub-contractor had a verbal contract with the Landlord to make emergency repairs to the septic system for \$1,500.00. The subcontractor wrote that the Tenant paid him and that the subcontractor understood that in exchange the Tenant would not have to pay rent for three months.

The Tenant stated that he has put a lot of work into the property and that the Landlord also owes him for other items including:

1. Picking up and installing a hot water heater	\$300.00
2. Fixing a wood stove (primary heat source)	\$250.00
3. Landscaping and yard improvement	\$1,500.00
4. Storing the Landlord's camper for 27 months @\$50.00	\$1,350.00
5. Repair major leak in the basement	<u>\$350.00</u>
TOTAL	\$3,750.00

The Landlord gave the following testimony:

The Landlord denied refusing to fix the septic system in June, 2011. He stated that he does not live near the rental property and that he was busy and told the Tenant that he could not come right away but would come as soon as he could, on the weekend. The Landlord testified that he agreed to pay \$100.00 to \$200.00 for fixing the septic field, and not the \$1,500.00 the Tenant alleges.

The Landlord testified that he did not post the name and contact number of an agent for the Tenant to contact in case of emergencies at the rental unit.

The Landlord questioned whether the subcontractor the Tenant hired was a friend of the Tenant, and also questioned the validity of the invoice provided by the Tenant.

The Landlord testified that he paid for the hot water heater and that he was prepared to have it installed, but the Tenant said he was not going to be home when the Landlord wanted to install it. The Landlord testified that the wood stove was new and was still under warrantee.

The Tenant gave the following reply:

The Tenant knows the subcontractor, but the subcontractor did do the work, which included excavation, pumping out the septic tank and backfilling.

Analysis

Section 33 of the Act states:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that repairs to the septic field at the rental property fall within the definition of "emergency repairs" under section 33(c)(ii) of the Act. I find that the Landlord did not comply with Section 33(2) of the Act, and therefore the Tenant could not make 2 attempts to telephone a person to contact for emergency repairs. I find that the Landlord did not attempt to make the repairs in a reasonable amount of time, nor did he take over completion of the emergency repair at any time. I find that the Tenant provided the Landlord with the invoice for the repairs and that the Landlord did not reimburse the Tenant for those costs. Therefore, pursuant to the provisions of Section 33(7) of the Act, I find that the Tenant may deduct \$1,500.00 from rent paid to the Landlord and that **no rent is owed to the Landlord for the months of November and December, 2011, or January, 2012.** I find that the Landlord's estimate of \$100.00 to \$200.00 for the cost of repair is much too low and that the subcontractor's account in the amount of \$1,500.00 is reasonable for the work done.

Therefore, the Tenant's application to cancel the Notice to End Tenancy for Unpaid Rent issued November 6, 2011, is **granted**. The Notice is of no effect. **The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.**

I find that the Tenant has not established his claim for a monetary award for the remainder of the items claimed, for the following reasons:

1. Picking up and installing a hot water heater: The Tenant did not provide the Landlord with an invoice for the cost of installing the hot water heater, nor did the Tenant provide sufficient evidence that he had provided the Landlord sufficient time to install it. During the Hearing, the Landlord was advised of his rights under Section 29 of the Act with respect to 24 hour written notice for access to the rental unit. The Tenant was also advised that, if provided with sufficient written notice, he is not required to be present when the Landlord exercises this right, nor does he have the right under the Act to insist on being present.
2. Fixing a wood stove (primary heat source): The Tenant did not provide the Landlord with an invoice for the cost of repairing the wood stove, nor did the Tenant provide sufficient evidence that he had provided the Landlord sufficient time to repair it.
3. Landscaping and yard improvement: the Tenant's application is for a monetary award for emergency repairs. Landscaping is not an emergency repair. In addition, there was insufficient evidence that the Landlord agreed that the Tenant would be reimbursed for these improvements. Residential Tenancy Policy Guideline #1 provides the following with respect to property maintenance:

PROPERTY MAINTENANCE

The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.

Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

4. Storing the Landlord's camper for 27 months @\$50.00: This is not considered to be emergency repairs. In addition, there was insufficient evidence that there was

an agreement between the parties that the Landlord would pay the Tenant \$50.00 a month to store his camper on the rental property.

5. Repair major leak in the basement: The Tenant provided insufficient evidence with respect to this portion of his claim.

Therefore, the Tenant's application with respect to points 1 to 5 listed above is dismissed **without leave to reapply**.

The Landlord is hereby warned of his responsibilities under Section 32(1) of the Act, which states:

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The Tenant has been partially successful in his claim and I find that he is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent due to the Landlord. For clarity, rent for December, 2011, January, 2012, and February, 2012, will be as follows:

December, 2011	Nil
January, 2012	Nil
February, 2012	\$450.00

Conclusion

The Tenants' application to cancel the Notice to End Tenancy for Unpaid Rent issued November 6, 2011, is **granted**. The Notice is of no effect. **The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.**

Rent for the month of November is Nil. Rent for the month of December, 2011 and January, 2012 will be Nil. Rent for the month of February, 2012 will be \$450.00.

The remainder of the Tenant's application is dismissed **without leave to reapply**.

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 02, 2011.

Residential Tenancy Branch