



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, RP, DRI, MNDC, PSF

Introduction.

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to cancel a ten day notice to end tenancy, have emergency repairs done, for the landlord to provide services and to comply with the *Act*. The tenant has also applied to dispute a rent increase and for a monetary order for compensation for the loss of his belongings.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

During the hearing it was determined that the notice to end tenancy was served on the tenant on December 23 and the tenant paid rent within five days of receiving it. The tenant had made application on November 12 and had applied to cancel a notice that he had not yet received. In any event, this portion of the tenant's application is moot and accordingly dismissed.

Issues to be decided

Has the landlord fulfilled his responsibilities as a landlord with regard to maintenance and repairs? Is the landlord responsible for the alleged loss of the tenant's personal belongings? Did the landlord impose a rent increase that is not in keeping with legislation?

Background and Evidence

This month to month tenancy started on March 01, 2011. There is no written tenancy agreement. Both parties offered contradictory evidence regarding the terms of the verbal agreement. The landlord stated that the rental unit is a two level home and the bedrooms in the lower level are not finished. He informed the tenant that the bedrooms in the basement would be finished eventually but did not specify when. The tenant stated that the landlord told his spouse that the basement bedrooms would be finished in three months. The tenant moved into the rental unit after making a verbal agreement to rent the unit for \$950.00 per month due on the first of each month.

The tenant stated that a roommate moved into the unit in April 2011 and the landlord raised the rent by \$100.00. The tenant agreed to pay the additional \$100.00 for the extra person. Again this arrangement was verbal.

The tenant stated that the landlord asked him to store his belongings on the deck outside the home and these items were exposed to the elements, resulting in the destruction of some of his personal belongings. The tenant stated that the landlord did not finish the basement and there was no room for his bedroom furniture, children's buggies, computer desk, bookshelves etc. and therefore he stored them outside.

The landlord argued that the basement was a dry place and except for the unfinished bedrooms, the balance of the basement was available for the tenant's use. The tenant stored a lot of items in the basement and had no reason to store items on the deck. The landlord denied having told the tenant to do so.

The tenant is claiming \$1,800.00 towards the loss of his personal belongings, but did not file any evidence to support his claim. The tenant filed photographs that depict the condition of the home. There is considerable mould on the lower parts of the walls. The carpets appear to be dirty and there is a fair amount of clutter in the home.

The landlord stated that the tenant did not fill the oil tank to heat the home as instructed to do so. Instead he used electric heaters which have caused the build up of mould inside the walls. The landlord stated that by not heating the home adequately, the tenant had caused considerable damage to the walls.

The tenant argued that the furnace was not serviced and therefore he did not use it. The landlord replied that the furnace was serviced just prior to the start of the tenancy and had an invoice as proof.

Analysis

Based on the testimony of both parties, I find that the parties entered into a verbal tenancy agreement. In the case of verbal agreements, I find that when verbal terms are clear and when both the Landlord and Tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

Moreover, it is important to note that in a dispute such as this, the two parties and the testimony each puts forth, do not stand on equal ground.

The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will likely not prevail

For this reason, I am not prepared to interpret whether the rental unit was rented on an as is basis, whether the landlord promised that the basement bedrooms would be completed within three months, and whether the rent was based on the number of occupants in the home.

The parties entered into a verbal agreement on the rental amount at the start of the tenancy and then altered the amount of the rent when an extra occupant moved in. The tenant was in agreement and has paid the extra \$100.00 through the tenancy. I find that the terms of the verbal agreement were altered verbally by mutual agreement and therefore I find that the landlord did not impose an illegal rent increase. Accordingly this portion of the tenant's application must be dismissed.

Also by verbal agreement the tenant rented the home as is. It is not clear whether the landlord promised to have the basement bedrooms finished in a set amount of time. Both parties put forth contradictory testimony. Since it was a verbal agreement and both parties are not in agreement about its terms, I am unable to interpret the terms and therefore I am unable to order the landlord to finish the basement for the tenant's use.

The tenant is claiming \$1,800.00 for lost belongings. It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The claimant bears the burden of establishing each claim on the balance of probabilities. 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. Finally the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In this case, the tenant has not filed any evidence to support his claim and therefore I find that his application for compensation does not satisfy any component of the above test. Accordingly the tenant's application for compensation is dismissed.

Conclusion

The tenancy will continue on the terms of the verbal agreement. The balance of the tenant's application is dismissed.

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: January 04, 2012.

Residential Tenancy Branch