



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord complete repairs; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Prior to the hearing the tenant had submitted documentation stating the named respondent had been the previous landlord and that he had sold the residential property to another landlord but the respondent still acts on the landlord's behalf. The agent confirmed this in his testimony and identified the proper landlord's name. I amend the tenant's Application to include only the correct name of the landlord.

As the agent for the landlord was served with the tenant's Application and the Notice of Hearing Documents I find that the landlord, through her agent has been sufficiently served with notice of this hearing and all of the tenant's evidence.

The tenant confirmed that she had not yet paid rent for May 2012 but that she has the funds to pay it. I ordered the tenant to pay rent by the end of business on the date of the hearing. I also cautioned the tenant that failure to do so could result in the landlord issuing a new 10 Day Notice to End Tenancy for Unpaid Rent.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to a monetary order for money owed from the landlord; for an order to have the landlord make repairs; to reduce rent for repairs not completed and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 46, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The parties agreed the tenant had a previous tenancy in the same residential property and as a result of the landlord's issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property so that the landlord could move into the unit the this tenant occupied the tenant moved into the upper rental unit.

The parties confirmed the tenant did not receive compensation an amount equivalent to one month's rent for receiving the 2 Month Notice or an additional amount equivalent to two month's rent for the landlord's failure to use the rental unit for the purposes stated in the 2 month notice.

The parties agreed this tenancy began in July 2011 as a month to month tenancy for the monthly rent of \$550.00 plus \$150.00 for the garage and \$76.00 per month for utilities. The parties also agree that on April 19, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent with an effective vacancy date of April 29, 2012 due to rent in the amount of \$750.00 of rent unpaid and \$71.00 in utilities unpaid.

The tenant submitted that the landlord had previously required that she have utilities (gas and hydro) in her name for the entire residential property and there came a point when she decided that she could no longer accommodate this arrangement for the landlord.

When she cancelled the utilities out of her name the tenant submits she received two final statements that required her to pay hydro charges of \$846.86 and gas utility charges of \$512.30.

The landlord's agent submits that in relation to the gas utility charges the bill does not reflect the deposit the tenant had to have made at the start of the account that should be applied to the balance owing. The landlord's agent submits in relation to the hydro bill that it includes amounts from a previous bill that the tenant failed to pay.

The landlord's agent submits that this matter is between the tenant and himself because he was the previous landlord when this issue arose and it is not the responsibility of the new landlord to reimburse the tenant. As such, the agent testified the landlord did not receive any rent from the tenant and the 10 Day Notice was issued.

The tenant testified that she has been without a stove since January 2012 and that she has been looking for a replacement stove for sometime but the one required is expensive and the landlord has not followed up on purchasing one. The landlord testified that since the tenant is not paying rent is not willing to get a new one.

The landlord's agent testified, when asked directly as to what steps he has taken to replace the stove, that he has asked the tenant to find one. The landlord testified that that is how he conducts his business – that if the tenants need something it is up to them to get it and he will then take responsibility for it.

Analysis

Section 46 of the Act allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due, by giving the tenant notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice.

The original agreement was for the tenant to have utilities in her name and the tenant would be responsible for 40% of the all utility costs and the landlord would reimburse the tenant for the additional 60%.

I accept from the tenant's evidence that the final gas charges were in the amount of \$512.30, in part, because the tenant had arranged equalized payments and when she cancelled the account the utility determined that the usage exceeded what had been paid for. There is no indication of a credit for any deposit paid. Even if there was the deposit would have been paid by the tenant and I find the landlord would still be responsible for 60%.

In relation to the hydro bill, I accept the landlord's assertion that this final bill includes a previously billed amount, however the landlord provided no evidence that he had compensated the tenant for the previous bill. In addition, in this bill there is recognition of a deposit given back to the tenant by the hydro provider that was credited to the account at the tenant's expense.

For these reasons I find the tenant has been owed 60% of the total amounts for each bill submitted by the tenant. As the total of combined bills is \$1,359.16 I find the landlord is responsible for reimbursement to the tenant in the amount of \$815.50. This amount has been due to the tenant since June 2011.

Despite the landlord's agent's claim that this is a matter between him and the tenant instead of the landlord and the tenant because it happened in the tenancy when he was the landlord I note the obligations of a previous landlord transfer to the new landlord when title of ownership is transferred and as such, I find this landlord is obligated to reimburse the tenant the above noted amount.

As this landlord has not provided the tenant with any of the utility monies owed I find that on the day the landlord issued the tenant the 10 Day Notice and as a result of the landlord's failure to provide the tenant with monies owed there was no rent due to the landlord. As such, I find the landlord did not have authority under the *Act* to issue the 10 Day Notice and I therefore cancel the 10 Day Notice to End Tenancy.

I also find that as a result and based on the parties' agreement in the hearing that the landlord was "owed" \$700.00 in rent and \$71.00 in utilities or a total of \$771.00 and that since the tenant has provided sufficient evidence to establish the landlord owes her \$815.50, the tenant is still entitled to \$44.50.

Section 32 requires a landlord to provide and maintain a residential property in a state of decoration and repair 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, makes it suitable for occupation by a tenant.

From the testimony of both parties I find the landlord has failed to fulfill these obligations in relation to the provision of a stove for the rental unit, first by requiring the tenant to go and look for a replacement and secondly because he has stopped any process at all.

I therefore order the landlord to replace the stove immediately without any required participation of the tenant other than to allow the landlord or agents access to install the new stove. I also order the tenant is entitled to reduce rent by \$50.00 per month until such time as the landlord obtains an order from a Dispute Resolution Officer confirming the stove has been replaced and that the rent can be reinstated to the full amount.

I also note that while the matter of compensation to the tenant related to the issues identified above in regard to the 2 Month Notice were not before me, the tenant remains at liberty to file a separate Application for Dispute Resolution seeking compensation for a total of up to 3 month's rent from the old tenancy, should the landlord fail to provide this compensation as is required under Section 51 of the *Act*.

Conclusion

As I have cancelled the 10 Day Notice I find the tenancy to be in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$94.50** comprised of \$44.50 rent owed and the \$50.00 fee paid by the tenant for this application.

I order, in accordance with Section 72(2)(a), the tenant may deduct this amount from her next rental payment, in addition to the amount of rent reduction for failure to provide a stove, in satisfaction of this claim.

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: May 09, 2012.

Residential Tenancy Branch