

DECISION

Dispute Codes CNR, MNDC, O, RR, FF

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy for unpaid rent, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the evidence submitted by the other, I am satisfied that both parties have been properly served with the notice of hearing and evidence as deemed under the Act.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for unpaid rent?
Is the Tenant entitled to a monetary order?
Is the Tenant entitled to reduce rent?

Background and Evidence

This Tenancy began on September 15, 2011 on a month to month basis as shown by the submitted copy of the signed tenancy agreement by both parties. The monthly rent is \$1,375.00 payable on the 1st of each month and a security deposit of \$687.50 was paid.

Both parties have agreed that the Landlord served the Tenants with a 10 day notice to end tenancy for unpaid rent dated June 6, 2012. The notice states that rent in amount of \$1,375.00 was due on June 1, 2012 was not paid and that the effective date of the notice was June 16, 2012.

The Tenant states that the rent was paid in full on June 8, 2012 when she left it at the business address indicated on the notice. The Landlord disputes this stating that the rent cheque was received on June 11, 2012 at the same location.

The Tenant clarified during the hearing that they seek monetary compensation of \$2,000.00 for the loss of use of the house and backyard. The Tenant states that because of the raw sewage backing up into the basement bathroom on 3 separate occasions requiring them to clean it up each time and that 2/3 of the backyard is unuseable because the Landlord excavated the septic tank to make repairs and clear blockages. The Landlord disputes this stating that only a portion of the area directly behind the house was affected by the excavation and that it was all done within a few days. The Landlord states that as soon as he was informed each time, he arranged to have the problem dealt with in a reasonable amount of time. The Landlord has submitted copies of a service invoice for the septic tank dated September 2, 2011, April 30, 2012, May 24, 2012 and May 31, 2012. The Tenant disputes this stating that the Landlord was notified of the first sewage backup in January of 2012, but chose to do nothing until April of 2012. The Landlord has submitted a copy of an email from the Tenants requesting action dated June 4, 2012. Both parties agreed that this issue has now been resolved and that the landscaping was re-done and the affected area was re-seeded on June 2, 2012.

Analysis

I find that the Tenant is entitled to an order cancelling the 10 day notice to end tenancy for unpaid rent. Both parties have confirmed that the notice was received on June 6, 2012 and that both parties are in dispute of when the rent was paid in full. The Tenant claims that the rent was paid late on June 8, 2012 and the Landlord states that the rent was paid on June 11, 2012. In either case, the rent paid was within the 5 day period of receiving the notice. The Landlord has failed to provide any evidence that a receipt/notice was given to the Tenant that the rent was accepted for use and occupancy only. The Tenant's application is granted. The notice dated June 6, 2012 is set aside and the Tenancy shall continue.

I find based upon the relevant material submitted that on a balance of probabilities I prefer the evidence of the Landlord over that of the Tenant. The Tenant has failed to justify the monetary claim as well as the extent of the loss of use. I find that the Landlord has responded reasonably and in a timely manner to resolve the septic issue. This portion of the Tenant's claim is dismissed. However, the Landlord has conceded in his direct testimony that a loss occurred in relation to the backyard as shown by the submitted photographs. I find that the Tenant suffered a mild inconvenience and that the Landlord has done all that was reasonable in the circumstances and the Tenant is entitled to a nominal award of \$10.00. As the backyard has now been re-seeded and is

awaiting growth, I decline to make any order to reduce any future rent. This portion of the Tenant's application is dismissed.

As the Tenant has been partially successful, I grant to the Tenant the recovery of the \$50.00 filing fee.

I order that the Tenant may withhold \$60.00 one-time from the August 2012.

Conclusion

The notice dated June 6, 2012 is set aside and the Tenancy shall continue.
The Tenant may withhold \$60.00 one-time from the August 2012 rent.

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: June 29, 2012.

Residential Tenancy Branch