



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with (a) an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit; and (b) an application by the tenant for an order setting aside the landlord's 10 Day Notice to End Tenancy dated May 2, 2012, a monetary order, an order that the landlord comply with the Act and an order suspending or setting conditions on the landlord's right to enter the rental unit. Both parties attended the hearing and had an opportunity to be heard.

Issues

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on December 15, 2011. The rent is \$1,700.00 due in advance on the first day of each month. A security deposit of \$850.00 was paid at the start of the tenancy. On May 2, 2012 the tenant was served with a Notice to End Tenancy for non-payment of rent. The tenant has not paid the outstanding rent but did file an application disputing the notice to end tenancy.

At the hearing the tenant did acknowledge that the rent has not been paid for either May or June but that he had been trying to give the rent to the landlord to no avail. The tenant claims that the landlord purposefully avoided him so that he would not be able to pay the rent so that she could then serve him with a Notice to End Tenancy. The landlord denies this.

In addition to the matter of unpaid rent is the issue of a ladybug infestation in the rental unit which began in February. The tenant claims that there were also carpet beetles in the unit but this is denied by the landlord. The landlord arranged for a pest control company to inspect and treat the rental unit. A copy of an invoice dated March 15, 2012 from Chilliwack Pest Control Ltd. was submitted by the landlord. This invoice indicated that the only insects found were ladybugs and that the attic space was fogged in order to eradicate the problem. The tenant was put up in a hotel for three nights at the landlord's expense while the rental unit was being treated. The landlord also paid for

the tenant's meals during this period. The hotel cost was \$371.64 and the meals were \$92.48.

There is a vast difference of opinion between the parties as to the severity and nature of the bug infestation. The tenant claims he was killing hundreds of bugs and that there were both ladybugs and carpet beetles. The landlord claims there were only ladybugs and that the infestation was relatively small.

Analysis

Landlord's Claim

The landlord has requested an order of possession and a monetary order. I shall deal with each of these requests in turn.

Order of Possession - Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In the present case, the tenant did file an application to dispute the Notice but failed to provide any proof at the hearing that he had in fact paid the rent. I realize that the tenant claims to have *tried* to pay the rent but was thwarted in his efforts by the landlord but I am not satisfied that the tenant provided sufficient evidence in support of this claim.

As a result, I find that that the tenant did not pay the rent within five days of receiving the 10 Day Notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and the landlord is entitled to an order of possession.

Monetary Order – The landlord has claimed unpaid rent in the total amount of \$3,400.00. This is comprised of unpaid rent for May and June. The tenant has not disputed that this is the amount of rent owing. The Act and the tenancy agreement require that the tenant pay the rent when it is due. I am therefore satisfied that the landlord has established this claim.

Tenant's Claim

The tenant has requested an order setting aside the landlord's 10 Day Notice to End Tenancy dated May 2, 2012, a monetary order, an order that the landlord comply with the Act and an order suspending or setting conditions on the landlord's right to enter the rental unit. I shall deal with each of these requests in turn.

Order setting aside Notice – The tenant requested an order setting aside the landlord's Notice to End Tenancy on the basis that the landlord refused to accept the rent when he tried to pay. I have already found above that I do not accept the tenant's claim in this regard. Accordingly, I find that the tenant is not entitled to the requested order.

Monetary Order – The tenant has requested a monetary order in the amount of \$2,550.00 as compensation for damage or loss under the Act. The tenant's application states that this amount is equivalent to 45 days of rent. The tenant claims that he should be compensated for the loss of quiet enjoyment he suffered as a result of the bug infestation. In this regard, while I understand that the tenant has been terribly upset by the presence of ladybugs in the rental unit, I find that the amount claimed by the tenant is excessive. First, there is no evidence before me that the landlord is responsible for the outbreak or that the landlord was negligent in her approach to resolving the matter. The landlord arranged for the unit to be treated, put the tenant up in a hotel for the duration of the treatment and covered his related food costs.

As a general principle, when making a claim of this nature, the party making the claim bears the burden of proof on a balance of probabilities both as to liability and quantum. In other words, the claimant must first prove that the respondent is liable for the loss and then, having proved that, must then prove that the amount claimed is an appropriate amount.

In the present case, as stated above, I am not satisfied based on the information before me that the landlord is liable for the loss suffered by the tenant. I accept the landlord's testimony that she had no prior knowledge of an infestation in the home and that it was simply a case of eggs having been laid by ladybugs in the home and then unfortunately hatching during the tenancy. Photos were submitted by the landlord showing that this rental unit was otherwise in impeccable condition thus supporting in my view the landlord's contention that she had no idea there were ladybug eggs in the unit. Based on my reading of the file, the matter was identified as a problem to the landlord in February and was dealt with in early March. A hotel stay and meals were paid for by the landlord. Accordingly, I find that the tenant has failed to prove that the landlord is liable for this outbreak.

Order to Comply/Order Suspending Landlord's Right of Entry – Since this tenancy is coming to an end I find that orders of this nature are no longer appropriate or necessary. I therefore dismiss the tenant's application in this regard.

Conclusion

I find that the landlord is entitled to an order for possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$3,450.00 comprised of \$3,400.00 in unpaid rent and the \$50.00 fee paid by the landlord for this application. I therefore order that the landlord retain the deposit and interest (\$0.00) of \$850.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,600.00.

I dismiss the tenant's application in its entirety.

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*.