



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, OLC, MND, MNDC, OPR, OPC

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant requested an order cancelling a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for alleged cause, for an order for the Landlord to comply with the Act, for an order to the Landlord to make emergency repairs and to allow the Tenant to reduce rent for repairs services or facilities agreed upon but not provided.

The Landlord requested an order of possession based on a 10 day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for alleged cause, a monetary order for damage to the rental unit, for money owed or compensation under the Act or tenancy agreement, and to end the tenancy early.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matters

The Landlord had requested an early end of tenancy and a monetary order for damage to the rental unit. It was explained to the Landlord at the outset of the hearing that the early end of tenancy request could not be determined at the same time as a monetary order was being requested. Furthermore, the Landlord has alleged the Tenant damaged the rental unit, however, while the Tenant is in possession of the rental unit and up to the time the tenancy ends, it is the Tenant's responsibility to make all repairs to the rental unit that the Tenant may have caused. Therefore, this request was premature on behalf of the Landlord and is dismissed with leave to reapply.

During the hearing the Tenant alleged that the Landlord owed the Tenant money. However, the Tenant had not requested a monetary order in his Application, and therefore, the Tenant's request for a monetary order is dismissed with leave to reapply.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Are the Notices to End Tenancy valid or should these be cancelled?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent, dated July 4, 2012, for \$325.00 in rent that was due on July 1, 2012 (the "10 day Notice"). A copy of the 10 day Notice was in evidence before me.

The Tenant agreed he had not paid the rent. The Tenant testified he was informed that he should ask the Landlord in writing to make the repairs he felt were needed to the rental unit and if the Landlord did not perform those repairs the Tenant could withhold rent. The Tenant wanted the Landlord to repair the door to the rental unit because he had trouble keeping his dogs in the cabin while he was away. The Tenant testified he cut a hole in the floor of the cabin so he could leave the cabin without letting the dogs out of the door.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the 10 day Notice is valid and should be enforced. I grant the Landlord an order of possession effective at 1:00 p.m. on July 31, 2012. I also order the Tenant to pay the Landlord \$325.00 in rent for the month of July 2012.

Under section 26 of the Act, the Tenant could not withhold rent even if he felt the Landlord was in breach of the Act or the tenancy agreement. A renter may withhold rent from their landlord only through the authority of the Act, such as in circumstances when the renter has an order from a Dispute Resolution Officer allowing them to do so, or if they have followed the emergency provisions of the Act.

The Tenant stated he thought these were emergency repairs and was told he could withhold rent if the Landlord did not make these repairs. I find either the Tenant misunderstood the information he was provided or did not follow it correctly.

Under section 33 of the Act, the Tenant could withhold rent for emergency repairs only if he had already made these repairs and had provided the bill to the Landlord for reimbursement, and the Landlord refused to pay:

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.

[Emphasis added.]

In this instance, the Tenant withheld rent and did not make the alleged emergency repairs. This is a breach of the Act and therefore, I dismiss the Tenant's Application.

It is not necessary to review the other Notice to end tenancy or the other requests made in either Application, aside from the monetary compensation for rent due to the Landlord.

As described above, I find the Tenant is in breach of the Act and tenancy agreement and the Landlord is entitled to an order of possession. I grant an order of possession for the rental unit effective at **1:00 p.m. July 31, 2012**. 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 comprised of **\$325.00**, comprised of unpaid rent. I grant the Landlord an order for this amount and this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: July 26, 2012.

Residential Tenancy Branch