

DECISION

Dispute Codes OPR, MNR, CNR, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on June 12, 2102 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. An Order for repairs to the unit – Section 32;
3. An Order allowing the tenant to reduce rent for repairs agreed upon but not provided – Section 65;
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to an order for repairs to the unit?

Is the Tenant entitled to reduce rent for repairs agreed upon but not provided?

Background and Evidence

The tenancy began on July 1, 2011. Rent in the amount of \$1,500.00 is payable in advance on the first day of each month. The Tenant states that \$750.00 was paid to the Landlord at the onset of the tenancy for a security deposit. The Landlord states that the

tenancy agreement cannot be found to verify the collection of the security deposit but that if the Landlord is able to locate the tenancy agreement and it notes that this money was collected, the Landlord will acknowledge this amount as paid.

The Landlord states that the Tenant is in arrears of \$500.00 for unpaid rent from September 2011, arrears of \$400.00 for unpaid rent from February 2012 and that the Tenant failed to pay \$750.00 for June 2012 rent. The Tenant states that these rental monies are owed by persons who were occupying a suite below the Tenant's unit. The Tenant states that the Tenant arranged for these persons to live in the suite and that they paid their portion of the rent directly to the Landlord. The Tenant states that the most recent person living in the suite invited a city bylaw officer into the unit and as a result, the unit was closed down as an illegal suite. The Tenant states that this person moved out of the unit and did not pay its share of the rent for June 2012.

The Landlord states that no tenancy agreement was entered into with any of these persons and that the tenancy agreement is only with the Tenant. The Landlord states that he did not restrict the Tenant from having these occupants in the suite as the Act did not allow such restrictions. The Landlord requests an Order of Possession effective July 15, 2012.

The Tenant states that in addition to the repairs required by the city to the suite, the upper unit requires repairs to the deck and kitchen countertops. The Tenant states that the deck and kitchen countertop had some existing damage at move-in and that this damage has worsened over the tenancy. The Tenant states that the pre-existing hole on the floor of the deck has enlarged and that lifting of the arborite on the counters that was present at move-in and has also worsened due to insufficient caulking around the sink. The Landlord denies repairs are required, denies pre-existing damage and states that the damage on the upper unit has occurred since move-in.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant. 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.

Given the Tenant's evidence that the Landlord was not involved in obtaining the occupants of the unit and given that no evidence was provided indicating that the Landlord entered into a tenancy agreement with anyone other than the Tenant, I find that the Tenant is fully responsible for the full monthly rent payable. Accepting the undisputed evidence of the Parties that the rental arrears claimed by the Landlord has not been paid, I find that the Landlord has substantiated a monetary entitlement of \$1,650.00. The Landlord is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$1,700.00**. I further find that the Notice is valid and as the Tenant has not moved out of the unit, that the Landlord is entitled to an Order of Possession effective July 15, 2011.

Although the Landlord denies that a security deposit was collected at the onset of the tenancy, given the Landlord's comfortable knowledge of the rights and obligations involved in a tenancy and noting that the Tenant's evidence of paying the security deposit is persuasive, I find that the Landlord did collect a security deposit of \$750.00 from the Tenant at the onset of the tenancy. Setting this security deposit of **\$750.00** plus zero interest off the entitlement of the Landlord leaves **\$950.00** owing by the Tenant to the Landlord.

Given that the tenancy will end, that the Landlord denies that repairs are needed and considering that the Tenant did not provide corroborating evidence of required repairs, I find that repairs are not necessary for a continuing tenancy and further that the Tenant

has failed to substantiate that repairs are necessary. I therefore dismiss the Tenant's claim for repairs. As the Tenant has not been successful with its application, I decline to award recovery of the filing fee.

Conclusion

The Tenant's application is dismissed

I grant an Order of Possession to the Landlord effective July 15, 2012.

I order that the Landlord retain the **deposit** and interest of \$750.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$950.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: July 04, 2012.

Residential Tenancy Branch