



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF
Tenant: CNR, MNR, MNDC

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for the cost of emergency repairs; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and the tenant both attended the conference call hearing and both parties provided evidentiary material prior to the commencement of the hearing. The parties both gave affirmed testimony and were given the opportunity to cross examine each other on the evidence and testimony provided. The tenant had 2 witnesses to call, however only one witness testified, and the landlord did not cross examine that witness due to time constraints in the hearing time scheduled.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
- Is the tenant entitled to a monetary order for the cost of emergency repairs?
- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy began on October 1, 2010 and reverted to a month-to-month tenancy after the one year expiry date of the fixed term, and the tenant still resides in the rental unit. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord was to collect a security deposit in the amount of \$800.00, although the landlord testified that the tenant did not pay any portion of the security deposit despite requests made by the landlord. The rental unit is a 3 bedroom, 1 bathroom home in the upper level and a suite with a kitchen in the lower level. The tenant rents the entire home and has a room-mate who occupies the lower level, and that level also contains a kitchen.

The landlord further testified that on July 26, 2012 the landlord discovered that the rent cheque for that month was returned by the tenant's financial institution for insufficient funds. The tenant had texted the landlord saying that she was moving from the rental unit at the end of August, 2012 and the landlord decided not to pursue July's rent. A copy of the text message was provided for this hearing, and it states that the tenant will find another place to live "ASAP." The landlord was paid rent for the month of August, but the tenant did not give the landlord any notice to vacate the rental unit as the landlord thought she would receive. The landlord asked the tenant to sign a mutual agreement to end the tenancy, but the tenant refused, saying it would take 5 months for the landlord to get her out.

During cross examination, the landlord agreed that the parties spoke on July 4, 2012 wherein the landlord told the tenant July's rent would be negotiated, but the landlord had already deposited the cheque into the landlord's bank account prior to that conversation. The landlord has an over-draft on that account and didn't notice that the tenant's cheque had been returned N.S.F. until July 26, 2012 because the landlord's mortgage payment was covered by the over-draft. The parties had exchanged emails and text messages and the landlord provided copies of some of those messages. The first string of emails in the evidence package talks about rent for August, and the landlord testified that a typing error exists, and she was in fact speaking about July's rent, not rent for August. The landlord testified that she expected the tenant would be moving out so did not pursue July's rent until August.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 2, 2012 and served a copy of it on the tenant personally the same day. A copy of the notice was provided for this hearing; it is dated August 1, 2012 and contains an expected date of vacancy of August 12, 2012. The notice states that the tenant failed to pay rent in the amount of \$1,600.00 that was due on July 1, 2012, plus \$800.00 Damage Deposit due October 1, 2010.

The landlord also testified that during the tenancy a flood had occurred inside the rental unit, which is an annual event. The tenant notified the landlord about it and the landlord thought her father and another employee were assisting the tenant, and did not know between June 26, 2012 and July 3, 2012 that repairs were not completed.

The landlord requests an Order of Possession for unpaid rent as well as a monetary order in the amount of \$3,200.00 for rent for the months of July and September, 2012. The landlord also requests that the tenant's application for a monetary order be dismissed.

The tenant testified that the landlord had agreed that the tenant was not required to pay rent for July, 2012 due to flooding in the lower level of the rental unit. Also, on August 21, 2012 the landlord returned all of the tenant's post-dated cheques for rent.

The landlord, the tenant and the tenant's ex-spouse all work for the landlord's father.

The tenant further testified that the flooding was due to a malfunction in a sump pump and occurred on June 9, 2012. A lot of rain had fallen in the area, and when the tenant contacted the landlord, the landlord advised the tenant to call the landlord's father. The tenant did so and on June 15, 2012 the landlord's father had another employee attend, who fixed 1 of 3 sump pumps and the flooding continued. On June 26, 2012 the landlord asked the tenant to deal with it. The following day the landlord was told that the flooding was really bad. The landlord's father showed up and told the tenant to turn on heat, but did nothing to fix the problem. On July 3, 2012 the tenant spoke to the landlord again saying that she couldn't sleep due to the constant loud pumps. The tenant also called her ex-spouse, who runs a construction site, and he fixed all three pumps and advised the landlord. Nothing was done but the landlord finally ordered a dehumidifier which the tenant picked up from the post office on July 17, 2012. The tenant had to tolerate 41 days of flooding, and testified that it took that long before all furniture could be moved back.

The tenant provided a Monetary Order Worksheet which claims \$200.00 for a damaged rug, and stated that an estimate for the replacement of it was from Sears for that amount, and that the rug was damaged as a result of the flooding. The tenant also claims \$250.00 for replacement of 2 hand-made cedar chairs also damaged in the flood, and stated that an estimate for purchase of replacement chairs was advertised on Castanet, an advertising website, for that amount. The tenant also claims \$60.00 for 3 shelving units damaged by the flooding and provided a copy of an advertisement for shelving units from Jysk for \$19.99 each, and testified that they were similar. The

tenant also testified that her room-mate's laptop screen was damaged by the flooding, and has estimated replacement at \$180.00. The tenant also claims \$375.00 for the cost of fixing the sump pumps and \$216.00 as an estimate for a maid service to clean the rental unit after the flooding had occurred. The Monetary Order Worksheet also shows a claim of \$3,116.00 as an estimate to clean up the flooding and stated that is what the landlord would have had to pay if the tenant's ex-spouse had not completed the repair to the sump pumps. The Monetary Order Worksheet also shows a claim of \$228.19 for a dehumidifier and air purifier and is supported by a receipt, but the tenant has withdrawn that portion of the application because the cost was charged to the employer. The tenant also provided photographs of the damaged items.

The tenant asks that the notice to end tenancy be cancelled, and for a monetary order.

The tenant's witness testified that the tenant had called him saying that the sump pumps were not working. The witness attended the rental unit and found water in the kitchen and other areas of the rental unit.

Analysis

In the circumstances, I accept that a flood occurred in the rental unit due to the failure of sump pumps and a wet, rainy season. However, I find that neither party has complied with the *Residential Tenancy Act*.

Firstly, with respect to the landlord's application for an Order of Possession, I have reviewed the notice to end tenancy, and I find it is in the approved form and contains accurate information relative to the tenancy and the testimony. However, the landlord testified that the string of emails exchanged between the parties dated July 26, 27 and 30, 2012 contain typing errors and the first of those emails should read "July" as opposed to "August." That email is from the landlord, and considering the typing error, which is not opposed by the tenant, the email would read: "Since we agreed that I won't collect any rent for the month of July – in lieu I would like to get a damage deposit from you. \$800.00 – I will provide you with a receipt that this is a damage deposit."

Therefore, I find that the parties agreed that no rent would be charged for the month of July, 2012. The landlord then issued a notice to end tenancy for unpaid rent for the month of July, 2012 on August 2, 2012. I understand the position of the landlord, that the landlord felt the tenant would move out at the end of August and the landlord would not pursue July's rent, but the landlord cannot retract the agreement. Further, nothing in the email refers to the tenant moving out of the rental unit at the end of August nor is there any request by the landlord. I see no evidence that there was any intent by the

tenant to move out by that date. The parties agree that the landlord requested a mutual agreement to end the tenancy, but the tenant declined to sign such an agreement. Therefore, the landlord is not entitled to an Order of Possession based on a notice to end tenancy for unpaid rent for the month of July, 2012, and the tenancy continues. I find that the requirement to pay rent for the month of July, 2012 has been extinguished by consent of the landlord due to the flooding experienced by the tenant and for the tenant's inconvenience and loss of enjoyment of the rental unit.

With respect to the landlord's claim for a monetary order for unpaid rent, I find that the tenant is required to pay rent for the month of September, 2012 even though the landlord returned the tenant's post-dated cheques. There is nothing in the evidence before me to indicate that the tenant's responsibility to pay rent for September, 2012 should be extinguished. I therefore find that the landlord is owed \$1,600.00 for September's rent.

With respect to the tenant's application for a monetary order for the cost of emergency repairs, the *Residential Tenancy Act* states that a tenant may make repairs for emergencies that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and if the tenant has made at least 2 attempts to contact the landlord or a person appointed by the landlord, and following those attempts, the tenant has given the landlord reasonable time to make the repairs. The *Act* also states that a landlord may take over completion of emergency repairs at any time. A landlord must reimburse a tenant for repairs if the tenant claims the amount from the landlord and provides a written account of the repairs accompanied by a receipt for each amount claimed.

The tenant charged the dehumidifier and air purifier to the employer and is not owed that money from the landlord, and therefore, the tenant is not entitled to claim that amount back from the landlord.

The tenant's application for \$375.00 is an estimate for fixing the sump pumps, but the tenant did not pay that amount to anyone for the repair and is therefore not entitled to that claim. The tenant's ex-spouse completed those repairs without charge, and therefore, the tenant cannot claim any amount for that from the landlord.

The tenant's claim for \$3,116.00 as an estimate for cleaning up the flooding is not supported by a receipt, and the tenant claims that amount stating that is what it would have cost the landlord if the company who provided the estimate did the work, but they were not hired to do the work, and therefore, the estimate is not particularly useful. The tenant also claims \$216.00 to clean after the sump pumps were repaired, but that amount was not paid by the tenant either. Neither party has provided any testimony or

evidence that the landlord cleaned up from the flooding and I find that the tenant is entitled to a monetary amount for that service. The tenant did not provide any evidence or testimony as to the time required to complete cleaning, and I find that \$150.00 is justified in the circumstances.

I find that the tenant is not out-of-pocket for any emergency repairs paid for by the tenant and the tenant's application for a monetary order for the cost of emergency repairs must be dismissed.

I find that the tenant has already been reimbursed by the landlord for inconveniences caused by the flood by not paying rent for the month of July, 2012.

With respect to the tenant's remaining application for a monetary order, the onus is on the tenant to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate or reduce such damage or loss.

In this case, I find that the tenant has failed to establish element 3. There is no evidence before me to substantiate that the estimates for the rug or chairs are of a similar value or quality than those that were damaged. I accept that they were damaged as a result of the flooding as evidenced by the photographs provided, however, the tenant has not satisfied me of the value of those items.

With respect to the tenant's claim in the amount of \$180.00 for a new laptop screen, the estimate provided is an email which states that the screen would be roughly \$130.00 to \$160.00. The email exchanges show the make and size of the screen, and the estimate includes installation. I find that the tenant has established a claim for \$145.60 including taxes.

I also find that the tenant is entitled to \$19.99 each for 3 shelving units, plus HST, for a total of \$67.17. Although I have no evidence of the quality of those shelving units, the amount claimed is a nominal amount and I accept that the shelving units are of that value and were damaged as a result of the flooding.

Having found that the landlord is owed \$1,600.00 for September's rent and the tenant is owed \$150.00 for clean-up after flooding, \$145.60 for the laptop screen, and \$67.17 for shelving, I find it prudent to set off those amounts. The landlord will have a monetary order for the difference in the amount of \$1,237.23.

Since both parties have been partially successful with the applications before me, I decline to order that either party recover filing fees from the other.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed, and the tenant's application for an order cancelling the notice to end tenancy is hereby allowed.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favor of the landlord in the amount of \$1, 237.23.

This order is final and binding on the parties and may be enforced.

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: September 12, 2012.

Residential Tenancy Branch