



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, FF

Introduction

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

1. An Order cancelling a Notice to end Tenancy for unpaid rent – Section 46;
2. A Monetary Order for the cost of emergency repairs – Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order that the Landlord comply with the Act – Section 62;
5. An order for emergency and other repairs – Section 32;
6. An Order for the Landlord to provide services – Section 65;
7. An Order suspending the Landlord’s right to enter the unit – Section 70;
8. An Order allowing the Tenant access to the unit – Section 70;
9. An Order allowing the reduction of rent – Section 65; and
10. An Order to recover the filing fee for this application - Section 72.

Preliminary Matters

At the onset of the Hearing, the second named Tenant in the application appeared and stated that the application for dispute resolution was not made by herself or with her consent to be added as a Party. The Tenant states that she does not wish to pursue an application against the Landlord and if she cannot be removed as a Party to the application, that she withdraws the application against the Landlord. Given this Tenant’s evidence and request, I found that the second named Tenant is not a Party to the application and this Tenant left the conference call.

The first named Tenant appeared and clarified that the tenancy ended and the Tenant is now only seeking a Monetary Order for compensation and recovery of the filing fee. The first named Tenant and the Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in November 2011 with monthly rent of \$1,000.00 payable on or before the first of each month. No security deposit was taken by the Landlord.

The Tenant states that they moved out of the unit and returned the keys to the Landlord on October 4, 2012. The Landlord states that he is not sure whether the Tenant moved out on September 4 or October 4, 2012.

The Tenant states that a tree fell on the house of the unit on July 19, 2012, destroying the front of the house and leaving the unit without electricity or water. The Tenant states that the tree was removed from the house the next day with the front of the house being covered by a tarp but that the only way out of the unit was through the back door, which was not large enough to allow the removal of the Tenants furniture. The Tenant states that the tarp was removed mid August 2012 and replaced by a piece of plywood, which the Tenant states did not provide security to the Tenant's belongings. The Tenant states that he was further unable to move out of the unit until the end of September 2012 due to the gate to the driveway being locked until then. The Tenant states that water and electricity was never restored to the unit. It is noted that a previous decision dated August 22, 2012, found that the tenancy had ended pursuant to a Notice to End Tenancy for unpaid rent.

The Tenant states that during the tenancy the Landlord entered the unit without notice or permission on four occasions and that on the last occasion, September 16, 2012, the police were called. The Tenant states the Landlord had also threatened to enter the unit and remove the Tenants belongings without permission causing the Tenant to further fear unauthorized entry into the unit. The Landlord states that he did not enter the Tenant's unit except for the time on September 16, 2012 when he entered to leave the Tenant with documents.

The Tenant states that the Tenant could not move his belongings until the end of September 2012 and had to remain in the unit as it was insecure until that time. The Tenant states that the electricity and water was never re-established to the unit, that he moved out of the unit on October 1, 2012 and returned the keys to the Landlord on October 4, 2012 using the days in-between to clean the unit. The Tenant seeks \$3,000.00 in compensation for the period between July 19, 2012 and October 4, 2012 and states that this amount has been calculated based on the rental rate of \$1,000.00 for each of these months.

The Landlord states that the Tenant had failed to pay rent since April 1, 2012 and that the Landlord has not filed an application for dispute resolution seeking payment of rental arrears. The Landlord states that a claim has been made against the Tenant in small claims court for unpaid rent and utilities. The Tenant confirms that the Landlord has made such a claim that includes a claim for damages to the property. The Parties agree that no rent was paid to the Landlord for the period July 1 to October 4, 2012 inclusive. The Landlord states that evidence of rental payments were provided for this Hearing. The Tenant states that no evidence was provided to the Tenant from the Landlord for this Hearing.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed. It is noted that, despite being given opportunity to respond to the Tenant's evidence, the Landlord did not provide any evidence to dispute that the tree fell on the house, or that the Tenant was unable to remove his belongings until the end of September 2012, or that the unit was without water and electricity from July 19, 2012 onward. It is also noted that the Landlord did not file an application to obtain an Order of Possession or claim unpaid rent despite the Decision of August 22, 2012 determining the end of the tenancy. I find therefore that the Tenant has established, on a balance of probabilities that the Tenant lost enjoyment of the unit on July 19, 2012 and that the Landlord failed to secure the unit or provide an exit for the Tenant's belongings until September 30, 2012 leaving the Tenant with no options to vacate the unit. As the matter of unpaid rent is not a matter in dispute before me, I decline to consider the Landlord's evidence in relation to rent.

I find that the amount claimed by the Tenant is reasonable given the circumstances and that the Tenant is therefore entitled to a monetary amount claimed of **\$3,000.00**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$3,050.00**.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$3,050.00**. 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 Act.

Dated: November 29, 2012.

Residential Tenancy Branch