



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNDC, RR, ERP, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, compensation for damage or loss under the Act, an order the landlord make emergency repairs, repairs and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. Outside of a copy of the Notice ending tenancy and a 1 page typed note, no written submissions were made.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent issued on October 2, 2012 be cancelled?

Is the tenant entitled to compensation in the sum of \$2,484.15, as damage or loss under the Act?

Should the landlord be Ordered to complete emergency repairs and repairs?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced 2 years ago; rent in the sum of \$825.00 is due on the first day of each month.

The tenant received a 10 Day Notice to End Tenancy for Unpaid rent issued on October 2, 2012 and applied to cancel the Notice, even though she has paid the rent.

The landlord confirmed that the tenant did pay the October rent and that the Notice was issued in error. The parties agreed that the tenancy will continue.

The tenant said that for 2 months during the summer her balcony was unusable. She could not open the balcony door as it was locked for the outside. The lack of the balcony resulted in a loss of use to the tenant and reduced the value of her tenancy. It was a hot summer and the loss was significant.

The tenant claimed the equivalent of 2 full month's rent; the balance of her claim was to retrieve what the landlord said she had not paid for October rent.

The landlord agreed that a loss of use of the balcony was experienced and said that the tenant should approach them with an offer to reach agreement on possible compensation.

The tenant lives in a 1 bedroom unit; the balcony is approximately 2 by 4 meters square. The tenant could not estimate the size of her rental unit.

The parties understood that I would consider nominal compensation only, as there is agreement that a loss was experienced.

The landlord said the tenant is entitled to deduct the \$50.00 filing fee from the next month's rent.

Analysis

The 10 Day Notice to End Tenancy for Unpaid Rent issued on October 2, 2012, was withdrawn by the landlord; it is of no force and effect. The parties agreed that the tenancy will continue.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

There is no dispute that the tenant lost the use of her balcony for a 2 month period during the summer months. This was a time of the year that the tenant could have expected full use of the balcony, rather than during the winter months.

The tenant has claimed the amount of rent paid for the unit, as compensation for damage or loss under the *Act*. While a landlord has an obligation to make repairs, there is no doubt that the tenant did suffer a loss of use of the balcony.

Residential Tenancy Branch policy suggests that a dispute resolution officer may award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to loss of use of the balcony and find that the tenant is entitled to compensation in the sum of \$87.50 per month, for the 2 months the work was completed.

Therefore, the tenant is entitled to compensation in the sum of \$175.00 plus the \$50.00 filing fee. The tenant may deduct \$225.00 from the next month’s rent due.

The balance of the tenant’s claim for compensation is dismissed.

Conclusion

The tenant is entitled to deduct \$225.00 from the next month’s rent due.

The balance of the claim for compensation is dismissed.

The Notice ending tenancy is of no force and the tenancy will continue.

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: November 13, 2012.

Residential Tenancy Branch