



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRIMO RENTALS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, MNR, ERP

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for an order to cancel the notice to end tenancy and for a monetary order for the cost of emergency repairs.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. At the start of the hearing, the tenant stated that she had not received a notice to end tenancy.

These parties attended a hearing on January 23, 2013. The tenant had applied to cancel a notice to end tenancy for unpaid rent. The notice was determined to be invalid as it was not served in the approved format. The landlord stated that after the hearing on January 23, he served the tenant with valid notice to end tenancy, in the approved format by posting the notice on the door to the rental unit, in the presence of a witness. The tenant denied having received it. The tenant was unable to explain why she applied to dispute a notice that she had not received.

Issues to be decided

Did the tenant receive the notice to end tenancy? Is the tenant entitled to a monetary order for the cost of fixing a door?

Background and Evidence

The parties entered into a tenancy agreement on October 03, 2012. Rent is \$900.00 due on the first day of each month. For October, the landlord gave the tenant a rent reduction of \$200.00 in exchange for her services to clean the carpet and the oven. The tenant agreed that this arrangement was made. The tenant also agreed that she did not pay a security deposit.

The tenant admitted that she has continued to occupy the rental unit and has not paid rent for four months now. She stated that she withheld rent because the unit has black mould and the landlord has not taken any steps to rid the unit of it. The landlord stated that he first found out about the alleged black mould at the hearing on January 23, 2013. The landlord stated that since then he has attempted to contact the tenant by phone and by visiting the rental unit and has been unsuccessful.

The tenant stated that she stayed up all night and was unavailable during the day because she slept for most of the day. The parties agreed to meet on March 02 at 7:00 pm to address and inspect the alleged mould.

The tenant stated that sometime in October 2012, the upstairs tenants were fighting and she asked them to keep it quiet. The male tenant reacted by breaking down the tenant's door. The tenant did not inform the landlord about it. She stated that the upstairs female tenant said that she would inform the landlord and did not do so. The tenant got a friend of hers to fix the door and filed a handwritten receipt in the amount of \$458.08. The tenant is claiming a monetary order for this amount.

Analysis

Based on the sworn testimony of both parties and the application of the tenant, upon further reflection I find that even though a copy of the notice to end tenancy was not filed into evidence, I find that on a balance of probabilities, it is more likely than not that the tenant received the notice to end tenancy. If she had not received the notice she would not have applied to dispute it.

Accordingly, I accept that the landlord served the notice to end tenancy by posting it on the front door of the rental unit shortly after the hearing on January 23, in the presence of a witness. I find that the tenant received the notice to end tenancy for unpaid rent, and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

During the hearing, the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55(1), upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy.

Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

Section 33 (3) of the *Residential Tenancy Act* addresses emergency repairs made by a tenant. It states that 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 contact the landlord
- c) Following those attempts, the tenant has given the landlord reasonable time to make the repairs

Based on the sworn testimony of the both parties, I find that repairing a broken door does not fit the definition of emergency repairs. I further find that the tenant took it upon herself to repair the door prior to contacting the landlord and providing him an opportunity to follow up on the repair of the door. Therefore she must bear the cost of doing so.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. The remainder of the tenant's application is dismissed.

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: February 28, 2013

Residential Tenancy Branch

