



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, 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 – Section 46;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. Evidence packages from both Parties were reviewed.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 5, 2010. Rent of \$1,375.00 is payable monthly on the first day of the month. On January 8, 2013 the Landlord served the Tenant with a 10 day notice for unpaid rent (the “Notice”) by posting the Notice on the door.

The Tenant states that no rent was paid for January 2013 as the Tenant deducted emergency repair costs from the rent. The Tenant states that on July 1, 2012 the sewer system backed up into the bathtub and toilet. The Tenant states that the Landlord has

never provided an emergency contact number and that after three calls to the Landlord's usual phone number, leaving voice messages and getting no response, the Tenant snaked the drain and cleaned the area. The Tenant states that he is a ticketed carpenter but also does plumbing work. The Tenant states that this back up occurred previously and that upon notifying the Landlord a plumber was called to make the repairs. The Tenant states alternately that he thinks that he provided or did provide an invoice dated July 5, 2012 to the Landlord in person shortly after the incident. The Tenant states that after waiting for repayment without hearing anything from the Landlord, the Tenant chose to make the deductions from his January 2013 rent.

The Landlord agrees that no emergency contact number has been provided to the Tenant and that no such number is posted in the building containing the Tenants' unit. The Landlord denies that the Tenant provided an invoice of the work being done prior to January 1, 2013 and denies that the incident even occurred. The Landlord states that he resides in the same building as the Tenant and that no calls or voice messages were received about sewer problems over the July 2012 long week-end and that the Landlord did not know anything about the incident until the Tenant filed the application. The Landlord states that he only received the Tenant's invoice the day before this hearing. The Landlord states that the building had a drain tile problem that was repaired during April and May 2012 and that due to a series of pin hole leaks that were present the entire building was re-piped between mid June and mid August 2012. The Landlord states that during this period the building had plumbers on call and that their emergency number was posted in the building. The Landlord provide a letter dated January 25, 2013 from the company doing the pipe work and this letter indicates that work was commenced on the main distribution piping in the latter part of June 2012 with completion of this phase on July 25, 2012.

The Tenant states that the plumbers were not on site until the end of July 2012 and that no emergency numbers were posted. The Tenant provided copies of the repair company's suite schedule for piping repairs indicating a start date of July 30, 2012 and

an end date of August 20, 2012. The Tenant claims \$1,512.00 for emergency repairs and states that the amount claimed is based on higher rates for work done on a holiday.

The Tenant states that pipes were repaired in his unit between August 17 and September 18, 2012 and that during this time, the plumbing and water was shut down daily. The Tenant states that they were required to move all of their belongings out of the way and that their kitchen and bathroom were not accessible. The Tenant states that the unit was so unusable that the family left the unit for a week. The Tenant states that while he and his son are out of the unit during work and school days that his wife works in the home. The Tenant claims \$825.00 for the loss of water and sewer over a period of 18 days. The Tenant calculates this amount as the monthly rent per diem rate multiplied by the 18 days.

The Landlord states that during the repair work no tenants were without water for longer than three hours on any given day but that nobody kept any record of the shut off times and that there is no real idea about the amount of time that water was not provided to the Tenants.. The Landlord states that the Tenant's unit contained illegal appliances which had to be removed and that the plumbing had been altered. The Landlord states that this did not cause the repair work any extra time.

The Tenant states that although no monetary claim has been included in this application, the Landlord has been regularly shutting off the heat to the building during the day. The Landlord denies that the heat is shut off at any time. There is no dispute that the Tenant has not paid February 2013 rent.

Analysis

Section 33 of the Act provides as follows:

- (1) In this section, "**emergency repairs**" means repairs that are
 - (a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) 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 telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

While it may be found that a sewer back up occurred and that the Tenant made the repairs following unsuccessful attempts to contact the Landlord to make repairs, I find on a balance of probabilities that the Tenant failed to provide an accounting of the repairs prior to making the deduction from the January 2013 rent. I make this finding based on the Landlord's assertion that no accounting was provided to the Landlord until just before the Hearing and the Tenant's lack of supporting evidence of such provision of accounting. Although the Tenant states that such was provided to the Landlord in person shortly after the incident, I note that the Tenant's evidence was hesitant on this point and it seems unreasonable that no other discussions with the Landlord took place about repayment for the repairs between the time the Tenant states the Landlord was provided with the accounting and the withholding of rent. I find therefore that the Tenant has failed on a balance of probabilities to substantiate an entitlement to reimbursement as required under the Act and that the Tenant is not entitled to withhold rent in the amount of \$1,512.00. As the Tenant withheld rent without right, I find that the Tenant is not entitled to a cancellation of the Notice and I dismiss this claim.

Section 27 of the Act provides that a landlord may terminate or restrict a service if, inter alia, the landlord reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy resulting from the restriction in the service. Although the repair company's letter of repair time lines submitted from the Landlord appears to contradict the Tenants' evidence of repair time lines, I accept the Tenant's evidence of the company's repair schedule as the Tenant's evidence is more specific, was prepared by the company at the time of the repairs and was intended for all the tenants. Based on the undisputed evidence that pipes were repaired in the unit resulting in the loss of

kitchen and bathroom facilities, considering the Landlord's evidence that no log of the disruption to the services was kept and accepting the Tenant's evidence that the disruption lasted longer than the actual intermittent disruption of services by virtue of having to rearrange the living space, I find that the Tenant is entitled to a reduction in the rent as claimed. I find that the Tenant is therefore entitled to compensation of **\$875.00**. I caution the Landlord in relation to the restriction of heat to the unit and give the Tenant liberty to make an application for compensation should the heat to the unit be restricted.

As the Tenant's application has met with success, albeit limited, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$925.00**.

Conclusion

The Tenant's claim for a cancellation of the Notice is dismissed.

I grant the Tenant a monetary order under Section 67 of the Act for **\$925.00**. 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: February 20, 2013

Residential Tenancy Branch

