



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, PSF, OPR, MNR

Introduction

This hearing dealt with an application by the tenant for an order setting a notice to end this tenancy, an order compelling the landlord to provide services and a monetary order. Also addressed was the landlord's application for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Should the landlord be ordered to provide services?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on March 1, 2012 and that monthly rent was set at \$800.00 per month. They further agreed that at the outset of the tenancy, the tenant paid a \$400.00 security deposit and a \$400.00 pet deposit. They further agreed that on February 3, 2013, the tenant was served with a 10 day notice to end tenancy.

The tenant testified that in each of the months of January and February, he paid \$700.00 in rent. He testified that he had a conversation with the landlord in which the landlord told him that he could deduct \$100.00 from his rent in January to compensate him because tenants in a lower unit were smoking and it was affecting him. The tenant testified that he believed that because the lower tenants continued to smoke in February, he should be entitled to deduct \$100.00 from that month's rent as well.

The landlord denied having permitted the tenant to make any deductions whatsoever and further testified that he received \$700.00 in the month of January and just \$300.00 in the month of February.

The tenant testified that it was his belief that the landlord was claiming that \$400.00 was part of the money that was owing for February because in May 2012, the tenant had applied his \$400.00 pet deposit to the rent and the landlord now wanted to recoup that money. The landlord denied that he was trying to recover the pet deposit and insisted that the tenant had paid just \$300.00 for the month of February.

The tenant seeks a rent reduction of \$100.00 per month because he claimed that the tenants in the lower suite were smoking in the unit, affecting his quiet enjoyment. The landlord testified that he had attended at the residence when the tenant complained about smoking and that he and the tenant had both gone into the lower unit and found that no one was smoking inside. The tenant denied that the lower unit had been found to be smoke free.

The tenant seeks a future rent reduction of \$100.00 per month because he pays all of the utility costs for the residential property despite the lower suite being occupied by a different tenant. He also seeks retroactive compensation of \$200.00 per month for 10 months for the period in which he has paid all of the utility costs.

The landlord testified that at the beginning of the tenancy, he told the tenant that the tenant was responsible for all utility costs and that his rent was lower than the market rent because he was paying for the utilities used by the tenant on the lower floor. The tenant denied that any such conversation took place and testified that he was paying market rent at \$800.00 per month.

The landlord seeks an order of possession and a monetary order for \$600.00 in unpaid rent.

Analysis

First addressing the notice to end tenancy, although the tenant claimed that the landlord had permitted him to reduce rent for January, the landlord denied having done so and the tenant was unable to provide evidence to corroborate this claim. The tenant provided a video of a telephone conversation that he had with the landlord which he claimed proved that the landlord had agreed to reduce the rent, but upon having viewed the video, I find that it does not corroborate the tenant's story. Rather, it underscored the fact that the parties had a great deal of difficulty communicating due to a language barrier.

I find insufficient evidence to prove that the landlord agreed that the tenant could reduce January's rent in compensation for exposure to second hand smoke. I further find that on the tenant's own testimony, the tenant was aware that the landlord had not explicitly

given him permission to reduce his rent in February by any amount, but that he did so because he thought it would be fair.

I find that the tenant wrongfully withheld \$100.00 in rent for each of the months of January and February and I find that the landlord has grounds to end the tenancy. I therefore dismiss the tenant's claim for an order setting aside the notice to end the tenancy and I grant the landlord an order of possession. Given the circumstances, I find it appropriate to set the end of the tenancy at March 31, 2013. **The tenant is obligated to pay the full amount of rent due for the month of March.**

As the tenancy is ending, it is unnecessary to address the claims for an order compelling the landlord to provide services and for a future rent reduction and I dismiss those claims.

Although the landlord is required to give a receipt for any cash payment, the landlord did not do so for rental payments and therefore has deprived the tenant of the ability to prove the amount that was paid for rent. For this reason I find that the landlord has failed to prove that the tenant withheld an additional \$400.00 in rent for the month of February and I dismiss that part of the landlord's claim. As the tenant acknowledged having withheld \$100.00 for each month, I find that the landlord is entitled to recover that money and I award him \$200.00.

Turning to the tenant's monetary claim, the tenancy agreement is clear that rent is set at \$800.00 and that utility costs are not included in the rent. Although the landlord claimed that he explained to the tenant that rent was lower than the market rent to compensate him for paying utilities for the other suite, I find insufficient evidence to corroborate this claim. Given the poor communication between the parties, I find it more likely than not that the tenant did not have this understanding at the beginning of the tenancy.

I find that it is unconscionable for the tenant to be required to pay utilities for a portion of the rental unit which he does not occupy and I find that he is entitled to compensation for the period of time in which he paid for all of the utilities.

The tenant did not provide any invoices showing the amount of utilities paid or evidence to show the relative space between his living area and the area occupied by the other tenant. For this reason, this award is imprecise and must be characterized as "rough justice". Because the tenant has 6 children and there is just one person living downstairs, I find that the tenant and his family should be held responsible for most of the utility costs. I find that an award of \$750.00 is appropriate, which represents \$75.00 for each of the 10 months of the tenancy for which the tenant applied for compensation. I award the tenant \$750.00.

Conclusion

The landlord is granted an order of possession. The landlord has been awarded \$200.00 and the tenant has been awarded \$750.00. Setting off these awards as against each other leaves a balance of \$550.00 payable by the landlord to the tenant. I grant the tenant a monetary order for \$550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The tenant may also deduct this amount from March's rent if it has not yet been paid by the time he receives this decision. The balance of the tenant's claim 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 27, 2013

Residential Tenancy Branch

