



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, RR, and LRE

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Unpaid Rent; for an Order requiring the Landlord to make emergency repairs to the rental unit; for an Order setting conditions on the Landlord's right to enter the rental unit; and for authorization to reduce rent for services or facilities agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Tenant stated that she personally served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, an amended Application for Dispute Resolution, and several documents the Tenant wishes to rely upon as evidence. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings. The Landlord submitted no evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Unpaid Rent be set aside; is there a need for an Order requiring the Landlord to make emergency repairs to the rental unit; is there a need for an Order setting conditions on the Landlord's right to enter the rental unit; and should the rent be reduced as compensation for services or facilities agreed upon but not provided?

Background and Evidence

The Landlord and the Tenant agree that the Tenant moved into the lower rental unit of the residential complex on December 01, 2012; that she moved into the upper rental unit of this residential complex on March 01, 2013; and that the Tenant is obligated to pay rent of \$1,125.00 by the first day of each month for the upper unit.

The Landlord and the Agent for the Landlord both stated that the Tenant still owes \$200.00 in rent from April of 2013 and \$1,125.00 from June of 2013. The Tenant stated

that she paid her rent, in full, in cash for both of those months. She stated that she paid June rent to the Landlord on June 04, 2013 but she cannot recall when she paid her rent in April.

The Witness for the Tenant, who is the Tenant's sister, stated that on June 04, 2013 she observed the Tenant pay rent, in cash, to the Landlord, although she is not certain how much was paid.

The Landlord and the Tenant agree that rent has always been paid in cash. The Tenant stated that she usually did not get a receipt for the cash payments. She stated that she believes she got one in December and she definitely got one in May, a copy of which was submitted in evidence. The Landlord stated that rent receipts were provided to the Tenant but he is not certain if they were provided for every payment. He stated that the only rent receipt he has with him is the one for May, which was provided in evidence by the Tenant, and he cannot recall when other receipts were provided to the Tenant.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy was posted on the Tenant's door on June 06, 2013, which declared the Tenant must vacate the rental unit by June 19, 2013. The Notice declared that the Tenant owed rent of \$1,325.00.

The Tenant is seeking an Order requiring the Landlord to remove a variety of garbage from the exterior of the rental unit, including car parts, a washer and dryer, furniture, and general debris. The Agent for the Landlord stated that there is nothing on the property of the residential complex that needs to be disposed of, with the exception of a washer and dryer. The Landlord agreed to remove the washer and dryer and the parties agreed that they will be removed on June 2, 2013 between 10:00 a.m. and 2:00 p.m.

The Tenant is seeking an Order requiring the Landlord to paint a few areas on the wall where drywall repairs have been made. The Agent for the Landlord stated that the walls were painted at the start of the tenancy and if there are any repairs made to the drywall that need repainting, they have been made by the Tenant.

The Tenant is seeking an Order requiring the Landlord to repair the deck, which she believes is insecure. The Agent for the Landlord stated that the deck is solid and not in need of repair.

The Tenant is seeking an Order requiring the Landlord to repair the fence, which she stated is being held together by rope. The Landlord agreed that the fence is not in good condition, however he stated that he never told the Tenant it would be fixed and he does not intend to fix it.

The Tenant is seeking an Order requiring the Landlord to repair the roof of the garage. The Landlord and the Tenant agree that the garage roof is leaking and that the Tenant is entitled to use the garage for storage. The Landlord stated that he intends to repair the roof this month, weather permitting.

The Tenant is seeking an Order requiring the Landlord to repair the window in the garage, which she contends was broken prior to the start of the tenancy. The Landlord stated that the window was broken by the Tenant's children, that he has provided her with a replacement window, and that she has not yet replaced the window.

The Tenant is seeking an Order requiring the Landlord to remedy a mice infestation. The Tenant stated that she first reported the problem with mice inside her unit in January of 2013 and the Landlord stated that he was never informed of the problem prior to these proceedings.

The Tenant is seeking an Order requiring the Landlord to ensure the lower rental unit is a "legal unit" before it is rented to another occupant. She stated that she is concerned that she will not have access to the hot water tank, the furnace, or the electrical panel once this unit is rented.

The Tenant is seeking an Order setting limits on the Landlord's right to enter the rental unit. The Tenant stated that the Landlord has entered the rental unit without lawful authority on several occasions. The Landlord denies the allegation.

Analysis

On the basis of the undisputed evidence, I find that the Landlord and the Tenant entered into a tenancy agreement for this rental unit, which required the Tenant to pay monthly rent of \$1,125.00 by the first day of each month.

Section 46 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy if rent is not paid when it is due. A landlord who wishes to end a tenancy pursuant to section 46 of the *Act* bears the burden of proving that rent has not been paid when it is due.

Section 26(2) of the *Act* stipulates that a landlord must provide a receipt when rent is paid by cash. Cash receipts help to establish when a rent payment has not been made. When a landlord regularly provides receipt for cash payments there is an expectation that a tenant will produce a receipt for every cash payment that has allegedly been made. When a tenant is unable to provide a receipt for an alleged payment in circumstances when they are regularly provided, it lends credibility to a landlord's claim that a cash payment has not been made. When a tenant has previously made cash payments and has not been provided with a receipt, there is no expectation that the tenant will provide a receipt for a cash payment that has been made.

I find that the Landlord has failed to establish that he has provided the Tenant with a receipt of every rent payment this Tenant has paid in cash. In reaching this conclusion I was influenced by the Tenant's testimony that she only received two receipts for rent; by the Landlord's inability to recall if a receipt was provided for every rent payment that

was made; and by the fact that only one rent receipt for the month of May of 2013 was submitted in evidence.

In the absence of evidence to show that rent receipts were provided every time rent was paid in cash, I find that the absence of a rent receipt for June does not corroborate the Landlord's claim that rent was not paid in full for April and June nor does it refute the Tenant's claim that rent was paid in full for those months. I specifically note that the Landlord did not submit a receipt that shows the Tenant paid only \$925.00 in April.

I note that the Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate the Landlord's claim that the Tenant did not pay all the rent that was due for April and June of 2013.

The Witness for the Tenant testified that she saw the Tenant pay some rent for June of 2013. As the Witness is a relative of the Tenant and must be considered a biased witness, her testimony does support the version of events provided by the Tenant.

In determining this matter I have placed no weight on the Agent for the Landlord's testimony that rent for June was not paid, as there has been no evidence presented to show that he was present when the rent was allegedly paid.

In determining this matter I have placed limited weight on the fact that the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, as there are a variety of reasons a landlord would serve a tenant with a Notice to End Tenancy even when grounds to end the tenancy do not exist.

As the Landlord has failed to establish that rent is outstanding, I grant the Tenant's application to set aside the Notice to End Tenancy that was served on June 06, 2013.

There is a general legal principle that places the burden of proving a fact on the person who is making a claim, not on the person who is denying the claim. In these circumstances, the burden of proving that repairs to the rental unit are necessary rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that anything other than a washer and dryer need to be removed from the residential property. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as photographs, that corroborates the Tenant's testimony that other items need to be removed from the residential property or that refutes the Agent for the Landlord's testimony that nothing else needs to be removed. I therefore dismiss the Tenant's application for an Order requiring the Landlord to remove property from the exterior of the residential complex, with the exception of the washer and dryer. As the Landlord has now agreed to remove the washer and dryer from the residential complex, I find that he is obligated to remove those items. I therefore Order the Landlord to remove those items by June 30, 2013.

I find that the Tenant has submitted insufficient evidence to show that the walls need painting or the deck needs repair. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as photographs, that corroborates the Tenant's testimony that the repairs are needed or that refutes the Agent for the Landlord's testimony that the repairs are not needed. I therefore dismiss the Tenant's application for an Order requiring the Landlord to paint the walls or repair the deck.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Tenant has submitted insufficient evidence to show that the fence contravenes health, safety or housing standards or that the condition of the fence renders this home unsuitable for occupation. As there is no evidence the Landlord promised the Tenant that he would repair the fence at any point during the tenancy or before the start of the tenancy, I find that the Landlord is not obligated to repair the fence. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair the fence.

I find that section 32(1) of the *Act* requires the Landlord to ensure that the garage roof does not leak. I therefore Order the Landlord to repair the garage roof by July 31, 2013.

I find that the Tenant has submitted insufficient evidence to show that the garage window was broken prior to the start of the tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Tenant's testimony that the window was broken at the start of the tenancy or that refutes the Landlord's testimony that the window was broken by the Tenant's children. I therefore dismiss the Tenant's application for an Order requiring the Landlord to repair the window.

I find that the Tenant has submitted insufficient evidence to show that she informed the Landlord that there were mice in the rental unit prior to filing this Application for Dispute Resolution. I find that the Landlord has now been informed of the problem and, pursuant to section 32(1) of the *Act*, the Landlord must ensure that the problem is resolved. I therefore Order the Landlord to take immediate action to remove the mice from the rental unit and to continue with such actions until the problem has been rectified.

I find that whether or not the lower rental unit is a "legal unit" has no significant impact on this tenancy and I therefore decline the Tenant's application for an Order ensuring that the unit is "legal" before it is rented to a third party. I remind both parties that the Landlord has an obligation to provide the Tenant with an emergency contact number in the event the Tenant needs urgent assistance with the furnace, the hot water tank, or the electrical panel.

In the absence of evidence that corroborates the Tenant's claim that the Landlord has entered her rental unit without lawful authority, I dismiss her claim for an Order setting limits on the Landlord's right to enter the rental unit. In an effort to provide some

harmony to this tenancy, I remind both parties that the Landlord can enter the rental unit only in the following circumstances:

- the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that states the purpose for entering, which must be reasonable, and that states the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- the landlord has an order of the director authorizing the entry;
- the tenant has abandoned the rental unit; and
- an emergency exists and the entry is necessary to protect life or property.

I find that the Tenant is not yet entitled to a rent reduction for deficiencies with the rental unit. In the event the Landlord does not make the repairs I have now Ordered him to make, the Tenant has the right to file another Application for Dispute Resolution seeking financial compensation.

Conclusion

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: June 19, 2013

Residential Tenancy Branch