



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, OPR, MNR, MNDC, OLC, RR, PSF, FF

Introduction

This hearing was convened in response to an application by the tenant **and** an application by the landlord.

The tenant filed pursuant to the *Residential Tenancy Act* (the Act) on July 30, 2013 for Orders as follows:

1. To cancel a 10 Day Notice to End for unpaid rent dated July 23, 2013 - Section 46
2. A Monetary Order for compensation for loss – Section 67
3. Return the security deposit – Section 38
4. Order the landlord to comply with the Act – Section 62
5. Allow the tenant to reduce rent for repairs, services, or facilities agreed upon – Section 65

The landlord filed pursuant to the Act on June 21, 2012 for Orders as follows:

1. An Order of Possession for unpaid rent - Section 55
2. A Monetary Order for unpaid rent - Section 67
3. An Order to recover the filing fee for this application - Section 72

Both parties appeared in the conference call hearing and participated with their submissions and testimony. The tenant advised they are still occupying the rental unit but have determined to vacate soon. The parties were given opportunity to turn minds to compromise and arrive at agreement to resolve their dispute, but this process was unsuccessful.

Issue(s) to be Decided

Should the Notice to End Tenancy for unpaid rent be cancelled?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amount claimed?

Is the tenant entitled to the monetary amount claimed?

Is the tenant entitled to a reduction in the rent payable?

Should the landlord be ordered to comply with the Act/

Background and Evidence

The rental unit is in a house occupied by several tenants each in a separate tenancy, which the parties describe as a 'rooming house'. The tenancy began February 16, 2013. The testimony of the landlord and the tenant is that this tenancy consists of a verbal agreement between the parties contracting for the rental of the living room of the house. The room is intended as a bedroom for the tenant. The tenant claims the rent as \$450.00 per month payable by the tenant in advance on the first day of each month. The landlord claims the rent as \$350.00 per month. The parties agree the tenancy came with a bed. The landlord collected a security deposit from the tenant at the outset of the tenancy. The parties arranged for the landlord to receive the rent each month from a government third party agency.

On July 23, 2013 the landlord gave the tenant a 10 day notice for unpaid rent due on July 01, 2013. The landlord testified that they did receive the rent for July 2013 by cheque from the agreed agency in the amount of \$450.00, but returned the cheque to the government issuer as in their understanding it was for "too much"; and, have not received a cheque for August 2013. The tenant provided evidence of a cheque issued June 26, 2013 – for July 2013 rent in the amount of \$450.00 – was cashed. Neither party provided evidence respecting the payment of rent for August 2013.

The tenant claims that the living room faces sunlight and becomes uncomfortably hot. The tenant also claims the landlord installed bi-fold doors to the living room which are

not sufficiently secured and that this has resulted in some intrusion by other tenants of the house. The tenant also claims the landlord took their bed away some time ago and gave it to another occupant of the house – leaving the applicant tenant without a bed and is therefore currently staying with a friend. In addition the tenant claims the landlord owes them wages for work performed for the landlord at the landlord's business, for an injury which they sustained while on the landlord's property, for a Veterinary bill as a result to an injury to their dog - by a neighbour's dog, for general stress due to the landlord's poor management of the house occupants, and for disturbance by other occupants of the house. The tenant testified they are no longer willing to be mindful of the landlord's wishes and trying to help out the landlord, and feel they have been taken advantage by the landlord.

The landlord testified they have always only tried to help out the tenant. The landlord agrees they discussed the moving of the bed, but that the occupants of the house arranged for the movement of the bed. They disagree they owe the tenant wages, and are not responsible for the tenant's choices.

Analysis

On preponderance of the relevant evidence in this matter, I find I prefer the tenant's evidence that the rent for July was paid. I find the landlord has not provided evidence of unpaid rent. The landlord is not entitled to an Order of Possession, or a monetary order. The landlord's application **is dismissed**, with the effect that the tenancy continues. The landlord is at liberty to issue a *valid* notice to end in the event the can prove unpaid rent.

In respect to the tenant's application for compensation, it must be noted that the burden of proving claims of loss rests on the claimant (in this matter the tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred. For the majority of their claims I find the tenant has not shown that the landlord was negligent, or that the landlord's negligence or non-compliance with the *Act* resulted in a loss. However, I do find that the tenant and landlord originally contracted for the provision of a bed with the unit and that it has now been removed. In addition, I find that the landlord contracted for the tenant to occupy the living room as the tenant's own space and the tenant has a reasonable expectation of sufficient security from others, and that a bi-fold door does not provide sufficient security of the tenant's unit. On preponderance of the evidence and on the balance of probabilities I find the tenant has met the test for loss solely in respect to these 2 items. As a result, I grant the tenant a rent abatement of **\$25.00** per week from the week starting August 12, 2013, for each partial week the rental unit is not

supplied with a bed by the landlord. As well, I also find the tenant is entitled to compensation of **\$25.00** per week from the week starting August 12, 2013 for each partial week the rental unit – the living room - is not supplied with a solid, hinged door, with a locking mechanism. All other claims brought by the tenant are **dismissed**, without leave to reapply.

Conclusion

The landlord's application is **dismissed**. The tenancy continues.

The tenant's application **is granted**, in part, as stipulated. I Order that the tenant *may deduct future rent* in satisfaction of their award, as applicable.

This Decision is final and binding on both parties.

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: August 20, 2013

Residential Tenancy Branch

