



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application: MT, CNR, MNR, ERP, RP, LRE, RR,
Landlord's Application: OPR, OPC, OPB, MND, MNR, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied for more time to cancel a Notice to End Tenancy and an Order of Possession for the rental unit. The tenant requested repair orders; orders suspending the landlord's right to enter the unit; monetary compensation for emergency repairs; and, authorization to reduce rent payable. The landlord applied for an Order of Possession based upon unpaid rent; cause; and, breach of an agreement with the landlord. The landlord requested monetary compensation for damage to the unit or property; unpaid rent; and, authorization to retain the security deposit.

Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matters – extension of time to dispute the Notice to End Tenancy

I determined that the tenant is still in possession of the rental unit. Accordingly, the tenant does not require an Order of Possession. Both parties understood that the tenant was intending to dispute a 10 Day Notice to End Tenancy for Unpaid Rent in filing the Application for Dispute Resolution. Therefore, I amended the application to reflect the correct dispute codes.

The tenant requested more time to file her Application for Dispute Resolution to cancel the 10 Day Notice to End Tenancy that was served upon her, in person, on September 2, 2013. The 10 Day Notice has an effective vacancy date of September 12, 2013. The tenant stated that she did not file her Application prior to October 7, 2013 as she was hoping she and the landlord would resolve the dispute between themselves.

A tenant who receives a 10 Day Notice has five days to file an Application for Dispute Resolution to dispute the Notice. Section 66 of the Act provides that I, as delegated by the Director, may extend certain time limits in extraordinary circumstances. However, section 66(3) provides that "The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice."

As the Notice to End Tenancy has an effective date of September 12, 2013 and the tenant did not file an Application for Dispute Resolution to dispute the Notice by that date, I cannot consider the tenant's request to cancel the 10 Day Notice pursuant to section 66(3) of the Act. Since the tenant did not file to dispute the 10 Day Notice within the latest time limit for doing so I find the 10 Day Notice must be considered undisputed.

Preliminary Matters – dispute codes on Landlord's Application

I determined that the landlord had not included any particulars with respect to compensation for damage to the unit or property and I amended the Application for Dispute Resolution to exclude that dispute code. The landlord remains at liberty to file another Application for Dispute Resolution to seek compensation for damage to the rental unit or property should she incur losses.

Although the landlord requested an Order of Possession for cause and for breach of an agreement, I determined that the only Notice to End Tenancy under dispute involved a 10 Day Notice to End Tenancy for Unpaid Rent. I amended the landlord's application accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to monetary compensation for unpaid rent?
3. Is the landlord authorized to retain the security deposit?
4. Is the tenant entitled to compensation for emergency repairs?
5. Is the tenant entitled to reduce future rent payable?
6. Is it necessary to issue Orders to the landlord with respect to repairs and the landlord's right to enter the unit?

Background and Evidence

A co-tenancy commenced in May 2006 and the co-tenants paid a security deposit of \$340.00. I heard the male co-tenant no longer resides at the rental unit.

The monthly rent of \$680.00 had been sent directly to the landlord by the Ministry near the end of every month for the following month. The rent was not sent to the landlord at the end of August 2013 and on September 2, 2013 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice).

The Notice indicates rent of \$680.00 was outstanding as of September 1, 2013. The tenant did not pay the outstanding rent or file to dispute the Notice within five days of receiving the Notice. The tenant did provide the landlord with \$300.00 on or about September 20, 2013.

The tenant submitted that she withheld rent because the unit did not meet health or safety standards and the toilet had not been flushing properly for approximately three months. The parties provided disputed testimony with respect to the function of the toilet in the rental unit; however, the condition of the rental unit was not an issue for me to consider with respect to the tenant's request to cancel the 10 Day Notice. As provided in the preliminary matters, the time to file an Application for Dispute Resolution to dispute a 10 Day Notice cannot be made after the effective date of the Notice; therefore, tenant's late request to cancel the Notice is ineffective and the 10 Day Notice is considered undisputed by virtue of section 66(3) of the Act.

I heard that the landlord advised the Ministry on or about September 18, 2013 that the tenancy had ended. The landlord did not receive any monies for the month of October 2013 and the tenant continues to occupy the rental unit.

The landlord was agreeable to giving the tenant until the end of October 2013 to vacate the rental unit provided her monetary order include rent for the month October 2013.

The tenant requested recovery of \$65.00 she spent to have the toilet removed and reinstalled by a plumber on September 24, 2013. The tenant asserted that the plumber advised her that the toilet was not flushing properly because of a "waxy buildup".

The landlord testified that a plumber had been called to the property on a number of occasions in the past only to discover items that do not belong in a toilet had been flushed down the toilet. When the tenant notified the landlord of the toilet not flushing properly this past summer the landlord had the septic tank pumped believing this was the issue since the tenant had a number of people residing on the property and using the bathroom facilities. When it was determined that the septic tank was not the issue, the landlord provided the tenant with the phone number of the landlord's plumber and told the tenant that if the problem was due to something inappropriate flushed into the

system the tenant would have to pay the plumber and if it was something that was wrong with the system the landlord would pay the plumber.

The landlord explained that she gave the tenant the plumber's phone number as opposed to arranging for the plumber's visit herself because the landlord is unable to access the rental unit with her key and when the landlord attends the property she is not permitted entry by the people that answer the door.

The tenant explained that one does not need a key to enter the rental unit because her ex-spouse (the co-tenant) had built a "boot room" and that to enter the house one has to reach their arm in and move a metal bar. The tenant explained that she did not call the landlord's plumber because she did have the money to do so. Rather, a friend of the tenant resolved the problem for a very low cost of \$65.00.

The tenant denied that the landlord had a plumber at the property on a number of previous occasions. Rather, the tenant acknowledged that a plumber was there once previously and the landlord has had the septic tank pumped twice during the tenancy.

The tenant also raised an issue with respect to hydro and cable being included in rent when the tenancy formed and then excluded at a later date. The tenant had not raised this as an issue in filing her Application for Dispute Resolution nor had she provided supporting evidence with respect to this position. This issue may be raised by the tenant in another Application for Dispute Resolution.

Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

It was undisputed that the tenant received a 10 Day Notice on September 2, 2013. Although the tenant failed to dispute the 10 Day Notice on October 7, 2013, for reasons already provided in this decision, I cannot consider the tenant's late request to cancel

the 10 Day Notice. Therefore, I find that the tenant was conclusively presumed to have accepted that the tenancy would end on the effective date of September 12, 2013 and was required to vacate the rental unit by that date.

Since the tenancy ended on September 12, 2013 and the tenant is still in possession of the rental unit I find the landlord entitled to an Order of Possession. I provide the landlord with an Order of Possession effective October 31, 2013.

I am satisfied the landlord is entitled to compensation for the unpaid rent of \$680.00 less the \$300.00 partial payment for the month of September 2013 and since the tenant remains in possession of the rental unit until October 31, 2013 I also award the landlord loss of rent for the month of October 2013 in the amount of \$680.00.

I authorize the landlord to retain the tenant's security deposit and accrued interest in partial satisfaction of the rent owed to the landlord. I calculated the accrued interest to be \$11.35. I also award the landlord the \$50.00 filing fee paid for this application.

In considering the tenant's request for monetary compensation of \$65.00 I have reviewed the plumber's receipt that the tenant provided. I find the faint copy difficult to read. I am able to decipher that the plumber removed the toilet and re-installed a wax seal. I find I am unable to see notations of the plumber that would indicate the nature of the problem. I find both parties provided a reasonable explanation as to why the toilet was not flushing properly and in the absence of clear evidence from the plumber I find the tenant did not satisfy me that the landlord is responsible for the amount paid by the tenant for clearing the toilet. Therefore, I dismiss the tenant's request for compensation.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: September 2013 (\$680.00 – 300.00)	\$ 380.00
Loss of Rent: October 2013	680.00
Filing fee	50.00
Less: security deposit	<u>(351.35)</u>
Monetary Order	\$ 758.65

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

As the tenancy has ended, I find it unnecessary to further consider the tenant's request for repair orders or authorization to reduce future rent payable. I also dismiss the tenant's request to suspend or set condition upon the landlord's right to enter the unit as

I was not provided any evidence by the tenant to suggest the landlord has entered unlawfully.

Conclusion

The tenant's application has been dismissed in its entirety. The landlord has been provided an Order of Possession effective at 1:00 p.m. on October 31, 2013. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$758.65 to serve and enforce as necessary.

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: October 22, 2013

Residential Tenancy Branch

