



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OLC, ERP, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for cost of emergency repairs, for money owed or compensation for damage or loss under the Act, to have the landlord comply with the Act, to have the landlord make emergency repairs for health and safety reason, and to provide services or facilities required by law.

Both parties appeared. During the hearing the parties agreed to settle the matters of a monetary order for cost of emergency repairs, for money owed or compensation for damage or loss under the Act, on the following conditions:

- 1) The parties agreed to end the tenancy by mutual agreement, effective October 31, 2013 at 1:00pm. The parties agreed the landlord is entitled to an order of possession;
- 2) The parties agreed that all rent owed by the tenant from June 2013 to October 2013, is waived;
- 3) The landlord agreed to pay the tenant as compensation the amount of \$2,500.00 this amount includes the tenants security deposit; The tenant agreed that he will not disclose to any other party the monetary compensation provided by the landlord;
- 4) The parties agreed this is a **full and final settlement agreement** relating to this tenancy.

This settlement agreement was reached in accordance with section 63 of the *Residential Tenancy Act*.

Issue to be decided

Should the landlord be order to comply with the Act?
Should the landlord make emergency repairs for health and safety reason, and to provide services or facilities required by law?

Background and Evidence

The tenancy began on August 15, 2012. Rent in the amount of \$750.00 was payable on the first of each month. A security deposit of \$375.00 was paid by the tenant.

The tenant testified that they have had no power or water in the rental unit since July 2013.

The landlords testified that the building is being prepared for renovations and that there should be no one living in the building as all the tenants were served with a 2 Month Notice to end Tenancy for Landlord use of property. However, three people have not left and that they are merely squatters on the property.

The landlord testified that there was a waterline that broke which caused a major flood, which caused considerable damage to the electrical panel and both the water and electricity were required to be shutoff due to unsafe conditions. The landlord testified wiring was also taken from the electrical panel, making it impossible to have the electricity turned on.

The tenant argued he was not served with a notice to end tenancy. The tenant stated that the power does work on occasion and believed that they can restore the service.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord has not submitted any evidence that the tenancy has legally ended by way of a 2 Month Notice to End Tenancy or that they have received an order of possession for the rental unit. The evidence of the tenant was that he did not receive any notice to end the tenancy.

Further, there was no evidence submitted by the landlord that they had applied for an order to end tenancy because the rental unit is uninhabitable or that the tenancy agreement is otherwise frustrated. I find it would have been reasonable if the water damage was so severe or that they were unable to provide essential service, such as water or electricity and were unable to fulfill their responsibilities as landlord that they would have made such an application. Rather, than to allow the rental unit to be occupied since the July 2013, incident.

Under section 27 (1) of the Act, a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation.

In this case, the parties did not dispute that the rental unit has been without water or electric since July 2013. Both are “essential” services which are necessary to the tenant’s use of the rental unit as living accommodation.

While the landlord has adequately compensated the tenant for the loss of the service by the tenant not having to pay rent for those months as per the settlement agreement.

I find the landlord has breached section 27(1) of the Act, by failing to provide essential services that are necessary for living accommodations.

As a result, I order the landlord to have the “essential” services of water and electricity restored to the rental unit forthwith and continue to provide those services until the tenancy legally ends in accordance with the Act.

Conclusion

As a result of the above settlement, the landlord is granted an order of possession effective October 31, 2013, should the tenant fail to comply with the settlement agreement. The tenant is granted a monetary order, should the landlord fail to comply with the settlement agreement.

I order the landlord to restore the essential services, of water and electricity to rental unit forthwith and continue to provide those services until the tenancy legally ends in accordance with the Act.

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 18, 2013

Residential Tenancy Branch

