



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, ERP, RR

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a 10 Day Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for the Landlord to comply with the Act - Section 65;
4. An Order for emergency repairs – Section 32; and
5. An Order for a rent reduction – Section 65.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to an order for a rent reduction?

Background and Evidence

A written tenancy agreement was not provided for the hearing however the Parties agreed that the tenancy agreement names only the Tenant. The tenancy started on March 4, 2010. Rent of \$870.00 is payable monthly by the first day of each month. The Tenant was served with a 10 day notice for unpaid rent on October 4, 2013 in person.

The Landlord states that the amount indicated on the notice as unpaid rent is in relation to an unpaid security deposit and unpaid rent. Upon being asked to clarify the amounts of each and the basis for the security deposit, the Landlord changed her evidence and stated that the amount equalled \$397.50 for unpaid rent in September 2013 and \$870.00 in unpaid rent for October 2013. It is noted that the Landlord had to make calculations while on the hearing to determine what amount was unpaid in September 2013. The Landlord states that there are financial records for the rents paid however it is noted that the Landlord did not submit any of this evidence. The Landlord states that the rent was paid by a Ministry until late September 2012 and no further cheques have been received that since then. The Landlord states that the Ministry provides rent cheques on the first day of each month. The Landlord states that she is concerned that there are several people living in the two bedroom unit and that the Support Person attending the hearing with the Tenant is also living in the unit. The Tenant denies that this person is living in the unit.

The Tenant states that all rents have been paid directly from the Ministry and that no rents are outstanding. The Tenant states that she attended the Ministry office on October 25, 2013 and was informed by the Ministry that the rent cheque for October 2013 was cashed and that another cheque was sent for November 2013 rent. The Tenant states that she has a print-out showing that the November cheque was sent.

The Tenant states that the kitchen sink became clogged on August 13, 2013 and that the Landlord was informed two days later. The Tenant states that the Landlord attended the unit and attempted repairs with drain cleaner and a snake and could not resolve the problem. The Tenant states that since then the Landlord has not returned to repair the sink. The Tenant claims \$200.00 in compensation for the loss of use of the sink and a rent reduction of \$100.00 per month until the sink is repaired. The Tenant states that she is disabled and has to wash her dishes in the bathroom. The Landlord states that no repairs will be made to the sink until the Tenant pays her rent. The

Landlord also states that the Tenant caused the sink to be plugged by having so many people living in the unit.

Analysis

Where a notice to end tenancy is disputed the burden of proof lies with the landlord. Considering the undisputed evidence of the rent being paid by the Ministry on the first day of each month, the Landlord's evidence that no cheques have been received since late September 2013 and considering the Landlord's conflicting evidence in relation to the unpaid rent including a security deposit or unpaid September 2013 rent, I find that the Tenant's evidence is preferable and find that the Landlord has failed, on a balance of probabilities, to establish that the Notice is valid. The Notice is therefore cancelled and of no effect.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Section 32 of the Act provides that a landlord must maintain a rental unit to make it suitable. Based on the undisputed evidence that the sink has been plugged since August 13, 2013 and that the Landlord has not made repairs, I find that the Tenant has substantiated that the Landlord has failed to maintain the unit and caused a loss of the use of the kitchen sink. I find that the Tenant is therefore entitled to compensation of \$200.00 as claimed. I order the Landlord to make repairs to the sink forthwith. Should the sink not be repaired before the first day of December 2013, I order the Tenant to reduce the rent for December 2013 by \$100.00 and for each month thereafter that the sink remains unrepaired for any portion of the previous month. I provide the Tenant

with a monetary order for \$200.00 and the Tenant may deduct this amount from future rent payable as well in full satisfaction of the claim.

Conclusion

I order the Tenant to reduce rent by \$100.00 for December 2012 and each month thereafter until repairs are completed as set out above.

I grant the Tenant an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 08, 2013

Residential Tenancy Branch

