



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, ERP, RP, MNDC, FF

Introduction

This hearing dealt with cross applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55,
- A monetary order for rent owed, pursuant to Section 67,
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent,
- An order to force the landlord to do repairs and emergency repairs,
- A monetary order for damages.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be decided for Landlord's Application

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to compensation for rental arrears?

Issues to be decided for Tenant's Application

Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

Should the landlord be ordered to complete repairs?

Is the tenant entitled to monetary compensation?

Background and Evidence

Based on the testimony of both parties, the background is as follows. The tenancy started on August 1, 2013 and the rent is \$595.00 per month. The landlord testified a security deposit of \$297.50 was paid at the start of the tenancy.

A copy of the tenancy agreement was in evidence. The landlord had also submitted a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated November 4, 2013, indicating that the tenant was in arrears for \$595.00 rent for November 2013. The landlord testified that the tenant also failed to pay \$595.00 rent for December 2013. The landlord is seeking an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent and a monetary order for rental arrears of \$1,190.00.

The tenant did not dispute that rent was not paid for November and December 2013. The tenant testified that she decided to withhold rent for November and December 2013 because she had been forced to endure a bed bug infestation, that the landlord had refused to deal with.

The tenant testified that she reported the bed bug problem to the landlord in mid-August 2013, after moving in. The tenant testified that the landlord used spray to deal with the bed bugs instead of calling in an exterminator. The tenant had submitted a doctor's note, dated August 30, 2013, into evidence which indicated that the tenant was suffering from bites, likely from bed bugs.

The tenant is seeking monetary compensation of \$2,275.00 for the loss of possessions, cleaning and repairs.

The landlord testified that they did respond to the tenant's report of bed bugs by hiring professional exterminators. The landlord submitted a copy of a receipt from a pest control contractor dated September 5, 2013 for spraying and a copy of a "*service report*" stating that no indication of bed bugs was found.

Analysis:

Landlord's Application

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice. effective on a date that is not earlier than 10 days after the date the tenant receives it.

This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. The Ten-day Notice includes written instructions on page 2 informing the tenant about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading "*Important Facts*" the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the 10-Day Notice was served on November 4, 2013 and the tenant did not pay these arrears. In fact the tenant continued to withhold her rent for December rent afterward.

I accept testimony of both parties, that the tenant did not pay all of the outstanding rent for November 2013, withheld rent for December 2013 and did not vacate the unit. Based on the above facts I find the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

In regard to the rental arrears, I find that, as of today, the tenant is in arrears for rent in the amount of \$1,190.00 and the landlord is entitled to this amount in compensation.

Tenant's Application

In regard to the portion of the tenant's application seeking repairs to the suite, I find that this matter is moot as the tenancy is now ending.

With respect to the tenant's claim for compensation, I find that an applicant's right to claim damages from another party, is dealt with under section 7 of the Act, which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act grants the Arbitrator authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party making the monetary claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

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

In regard to the tenant's allegation that the landlord failed to comply with the Act by not properly dealing with the alleged bed bug problem, I find that I find that section 32 of the Act requires that a landlord maintain residential property in a state of repair that complies with health, safety and housing standards required by law. I find that this includes responding promptly to complaints from tenants regarding vermin Infestations.

In this regard, I find that the landlord did adequately respond to the tenant's complaint by engaging qualified pest control specialists who treated the rental unit, despite finding no evidence of a bed bug contamination.

Given the above, I find that there was no violation of the Act by the landlord and the tenant's claim for monetary compensation fails element 2 of the test for damages. On this basis, I find that the tenant's application must be dismissed.

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent. This decision and order is final and binding and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is also entitled to total monetary compensation of \$1,240.00 comprised of \$1,190.00 in rental arrears and the \$50.00 cost of the application. I order that the landlord retain the tenant's \$297.50 security deposit in partial satisfaction of the claim, leaving \$942.50 still outstanding in favour of the landlord.

I hereby issue a monetary order in favour of the landlord for \$942.50 which must be served on the tenant in person or by registered mail. This decision and order is final and binding and may be enforced through Small Claims Court if necessary.

The tenant's application is dismissed in its entirety, without leave to reapply.

Conclusion

The landlord is successful in the application and is granted a monetary order for rent, an order to retain the security deposit and an Order of Possession.

The tenant's application is dismissed.

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: December 10, 2013

Residential Tenancy Branch

