Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, CNR, DRI, FF

Introduction

This hearing dealt with 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; Compensation for damages and loss of revenue, pursuant to Section 67.

The tenant applied for the following: An order to cancel the 10-Day Notice to end tenancy ; Compensation for damages and loss.

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.

At the outset of the hearing, the parties advised that the tenant vacated the rental unit on January 12, 2014. As the tenant no longer resides in the unit, I find the Order of Possession requested by the landlord is moot and the portion of the tenant's application seeking to cancel the 10-Day Notice is resolved as the tenant has already moved out.

The hearing will proceed with respect to the monetary claims only.

Issues to be decided

Is the landlord entitled to a monetary order for rental arrears?

Is the landlord entitled to damages for cleaning and repairs?

Is the tenant entitled to monetary compensation?

Preliminary Matter Service of Respondent's Evidence

The landlord had submitted two different evidence packages, which were received to the file at Residential Tenancy Branch prior to the hearing. However, the tenant testified that he only received part of the landlord's evidence and did not receive the January 22, 2014 package at all.

The landlord acknowledged that they were not able to mail the amended claim and receipt to the tenant as the tenant left without leave a forwarding address.

Residential Tenancy Rules of Procedure, requires all evidence to be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding. I find that the applicant tenant did comply with this requirement.

Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

I find that, the landlord's evidence was served to the RTB but was not served to the tenant prior to the hearing. Accordingly, the landlord's most recent evidence package was excluded from consideration. However, the landlord was permitted to give verbal testimony and the tenant was granted the opportunity to respond.

Background and Evidence

The tenancy started on August 15, 2013 with rent set at $1,115.00 per month and a security deposit of $575.00 was paid.

The landlord testified that the tenant failed to pay $100.00 rent owed for October 2013 and $1,115.00 for December 2013 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant. In evidence was a copy of the Ten Day Notice to End Tenancy for Unpaid Rent dated December 3, 2013 and a copy of the tenancy agreement.

The landlord testified that the tenant remained in the unit until January 12, 2014 and also failed to pay $1,115.00 rent for January 2014. The landlord is claiming $2,330.00 rent plus outstanding utility arrears of $218.89.

In addition to the above, the landlord is claiming total cleaning, rekeying and repair costs of $1,648.50.

The tenant acknowledged that the rent for $100.00 for October and $1,115.00 for December 2013 was owed. With respect to the rent for January 2014, the tenant felt that he should only have to pay for half the month. The tenant pointed out that, despite having nowhere to go, he left mid month to cooperate with the landlord so that the suite could be re-rented.

The tenant questioned the amount of the utility bill on the basis of the tenant's belief that utilities were supposed to be included in the rent.

In regard to the landlord's claims for cleaning and repairs, the tenant consented to cleaning costs of $200.00, but is disputing the remainder of the damages claim.

In regard to the tenant's monetary claim for compensation of $1,150.00, the tenant pointed out that the final months of the tenancy were disrupted by renovations and repairs to a unit on another floor that had been subject to a fire. The tenant testified that they lost the use of one of the elevators and had to endure noise and activity on a daily basis. The tenant felt that this devalued the tenancy.

Analysis:

Landlord's Application

In regard to the rental arrears, 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. If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the Notice was properly issued and served and that the tenant owed rental arrears of $1,250.00 as of December 3, 2013.

I also accept that the tenant owes $218.89 for utilities pursuant to the hydro invoice submitted by the landlord.

I find that the tenant over-held the suite beyond the effective date of the 10-Day Notice, until January 12, 2014, and therefore the tenant owes pro-rated rent for 12 days during January, amounting to $439.89.

In regard to the landlord's right to claim damages from this tenant for repairs, I find that section 7 of the Act 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 cleaning and repairs, I find that under section 32 of the Act a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. While a tenant of a rental unit must repair damage to the rental unit or common areas caused by the actions or neglect of the tenant, a tenant is not required to make repairs for normal wear and tear.

Section 37(2) of the Act also states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the tenant's role in causing damage can normally be established by comparing the condition before the tenancy began, with the condition of the unit after the tenancy has ended. In other words, through the submission of completed copies of move-in and move-out condition inspection reports featuring both party's signatures

Sections 23(3) and 35 of the Act state that the landlord must complete a condition inspection report in accordance with the regulations and both the landlord and tenant must sign the report, after which the landlord must give the

tenant a copy in accordance with the regulations. Part 3 of the Regulation goes into significant detail about the specific obligations regarding how and when the Start-of-Tenancy and End-of-Tenancy Condition Inspection Reports must be conducted.

In this instance I find that neither a move-in condition inspection report nor move-out condition inspection report had been submitted into evidence.

In any case, I find that the landlord has not presented sufficient evidence to meet all elements of the test for damage and loss in order to justify compensation for the claim for repairs to the unit. I find that the landlord's claims for repairs must therefore be dismissed.

In regard to the claim for cost of changing the locks, I find that Section 25 of the Act places the responsibility for the cost of changing the locks at the beginning, or end of the tenancy on the landlord. Section 25(1) states that at the request of a tenant at the start of a new tenancy, the landlord must:

> (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
>
> (b) pay all costs associated with the changes under paragraph (a).

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage or loss not occurred. I find it likely that the landlord would incur the cost of providing re-keyed or new locks for the new renters and for the security of the property. Accordingly I dismiss the landlord's claim for compensation for the cost of the new locks.

I find that the landlord is entitled to total compensation of $2,108.78, comprised of $1,250.00 for rental arrears for October and December 2013 $218.89 for utilities, $439.89 for a portion of January rent and $200.00 for cleaning.

Tenant's Monetary Claim

In regard to the tenant's claim for compensation based on devalued tenancy, I find that section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

> (a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept that the tenancy was affected for a time by the remediation of the fire damage on another floor. Accordingly I grant the tenant a retro-active rent abatement of 5% of the rent value for two months, totaling $111.50.

Based on the evidence before me in the landlord's application, I find that the landlord is entitled to total monetary compensation of $2,108.78.

Based on the evidence before me in the tenant's application, I find that the tenant is entitled to total compensation of $111.50.

In setting off the above two amounts I find that the landlord is entitled to $1,997.28. I order that the landlord retain the tenant's $575.00 security in satisfaction of the claim and hereby issue a Monetary Order in favour of the landlord in the amount of $1,422.28. This order must be served on the tenant and may be enforced through Small Claims Court if unpaid.

Each party is responsible for their own costs of the applications.

Conclusion

The landlord and the tenant are both partly successful in their applications relating to the monetary claims. The remaining issues in the applications and cross application are found to be moot as the tenancy has ended.

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: January 30, 2014

Residential Tenancy Branch