



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 583230 B C Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, CNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with two related applications. One file is the tenant's application for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; a monetary order; an order compelling the landlord to make certain repairs; and an order reducing past or future rent for repairs, services, or facilities agreed upon but not provided. The other file is the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications one decision will be rendered for both.

Although the landlord had not served or filed its' evidence within the required time limit the tenant indicated that he was prepared to go ahead with the hearing.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession and, if so, upon what terms?
- Should a repair order be made and, if so, on what terms?
- Is either party entitled to a monetary order and, if so, in what amount?
- Should the rent be reduced and, if so, on what terms?

Background and Evidence

The tenant first rented a different unit in the same building. That tenancy commenced August 1, 2013. The monthly rent for that unit was \$850.00. The tenant paid a security deposit of \$450.00 and a pet damage deposit of \$450.00.

On November 1, 2014 the tenant moved into this unit. A new tenancy agreement was signed on December 5. The monthly rent of \$1250.00 is due on the first day of the month. The parties agreed that the tenant would do janitorial work inside and outside the building in return for a \$250.00 credit towards the rent. The security deposit and pet damage deposit paid for the previous unit was transferred to the new tenancy.

agreement. The tenant paid another \$400.00 on December 13 to bring each deposit to \$650.00.

A 10 Day Notice to End Tenancy for Non-Payment of Rent was issued and posted at the rental unit on December 23. The notice stated that the arrears as of December 2 were \$1580.00. The landlord testified that the tenant paid \$620.00 on December 10; \$380.00 on December 30; and \$1000. On December 31; a total of \$2000.00.

This property management company assumed responsibility for this building on December 1.

The parties agreed that several of the repairs requested by the tenant have been done since the new property manager took over.

The landlord testified that as of the date of the hearing the following repairs have not been made:

A cover for the bathroom fan. This is an issue in all of the units in the building. The difficulty is that because of the age of the fan the landlord has not been able to find a cover that fits. Replacement of all the fans may be the only solution.

New cover for the heat register. Once again finding something that fits is the issue.

The existing cover has been painted.

Repair the drywall in the mast bedroom ceiling. The landlord said access to the unit has been the issue; the tenant disputed this allegation.

The light in the master bedroom closet. The landlord was not sure about the status of this repair.

The tenant testified that after he filed his application for dispute resolution he raised the issue of the appearance of mice in his unit and bedbugs in the building with the landlord. The landlord testified that they have an ongoing contract with a pest control company; that bedbugs have only been reported in two adjacent units; and those units have been treated. He also testified that they intend to replace the carpets in the hallways as a further bedbug prevention measure. Regarding the mice, the landlord testified that they have just received a quote from a different company for rodent control and the mouse issue will be dealt with.

The tenant asked for compensation for the noise caused by construction in the unit above his. One of the purposes of the construction was to fix a plumbing issue that was causing water to leak into the tenant's unit. According to the tenant the work went on from 8:00 am to 6:00 pm, December 1 to December 11. The tenant works away from home from 10:00 am to 6:00 pm, Thursday to Monday.

The tenant asked for compensation for the inconveniences caused by problems in the laundry room which is across the hall from the rental unit. The tenant says that from October 31 to November 27 whenever someone used the laundry water would spill onto the floor and down the hallway in front of his unit. No water came into his unit but it was messy in the hallway, particularly when the tenant was taking his dogs in and out of his unit.

It is common ground that one of the first things the new property manager did was to completely remodel the laundry room and that since the renovation was completed there have been no further issues.

Analysis

Is the landlord entitled to an order of possession and, if so, upon what terms?

Section 90 of the *Residential Tenancy Act* provides that a document posted at a rental unit is deemed delivered on the third day after it was attached. The tenant had five days from December 26 to pay the arrears in full, which he did. Pursuant to section 46(4), if a tenant pays the overdue rent within five days after receiving the notice to end tenancy the notice has no effect. Accordingly, the 10 Day Notice to End Tenancy for Non-Payment of rent dated December 23 is of no force or effect.

Should a repair order be made and, if so, on what terms?

Since the tenant filed this application for dispute resolution many of the issues he raised have been addressed by the landlord. The remaining issues, while they need to be done, are primarily esthetic issues and do not affect the tenant's daily living. Further, the measures being taken by the landlord regarding pest control are reasonable. In light of the recent activity by the landlord no repair order will be made at this time. If the landlord does not address the unresolved repairs within a reasonable period of time or cancels the pest control contracts the tenant may apply again for a repair order.

Is either party entitled to a monetary order and, if so, in what amount?

Should the rent be reduced and, if so, on what terms?

The landlord's claim for a monetary order is for arrears of rent that have accrued since January 1 and for suspected damage to the rental unit. If the tenant owes rent for January and February the landlord must serve a new 10 Day Notice to End Tenancy for Non-Payment of Rent and proceed accordingly. A landlord cannot claim for compensation for damage to a rental unit until after a tenancy has ended, although section 47(1) does allow a landlord to serve a tenant with a 1 Month Notice to End Tenancy for Cause if a tenant has caused extraordinary damage to the rental unit.

Although the landlord has fixed several deficiencies in the building and the unit the tenant did have to live with an unpleasant situation in November. Having considered all of the factors I award the tenant \$100.00 as compensation for repairs, services or facilities agreed upon but not provided.

I am not awarding any compensation for loss of quiet enjoyment that may have been caused by the construction in the unit above the tenant's. The disruption was only during normal working hours; the tenant was not at home most of the time; and the purpose of the work was to fix a problem complained about by the tenant.

As most of the repair issues have been dealt with by the landlord no order for an ongoing rent reduction will be made.

Filing Fees

As the tenant was at least partially successful on his application he is entitled to reimbursement from the landlord of the \$50.00 fee he paid to file it. As the landlord was not successful on its application no order for reimbursement from the tenant will be made.

Conclusion

- a. The 10 Day Notice to End Tenancy for Non-Payment of Rent dated December 23, 2013 is set aside and is of no force or effect.
- b. No repair order will be made at this time.
- c. A monetary order in favour of the tenant in the amount of \$150.00 is granted. Pursuant to section 72 this amount may be deducted from any rent due to the landlord.

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: February 21, 2014

Residential Tenancy Branch

