



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, ERP

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for unpaid rent, for monetary compensation for emergency repairs, for loss or damage under the Act, regulations or tenancy agreement and for the Landlord to make emergency repairs.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on December 27, 2013. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

The original hearing was held on January 15, 2014 and was adjourned because the Landlord was represented by an Agent that was new to the tenancy and did not have full knowledge of the events that had taken place in the tenancy. As a result the hearing was adjourned so that the owner/Landlord could participate in the hearing. Both parties agreed to this and the Hearing was adjourned to March 4, 2014.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to monetary compensation for loss or damage and if so how much?
3. Is the Tenant entitled to monetary compensation for the cost of emergency repairs that the Tenant paid for and if so how much?
4. Is the Landlord required to do emergency repairs to the property?

Background and Evidence

This tenancy started on March 28, 2012 as a month to month tenancy. The Tenant said the rent is \$700.00 and the Landlord said there are now additional occupants in the unit so the parties agreed that the rent would be \$800.00. Rent is payable on the 1st of each month. The Tenant said he paid a security deposit of \$350.00 and a pet deposit of

\$350.00 at the start of the tenancy. The Landlord said no deposits were paid. Neither party submitted any evidence to support whether any deposits were paid or not. The Tenant said the tenancy agreement was verbal.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated January 1, 2014. The Landlord's Agent said he served the Notice to End Tenancy on January 1, 2014 by personal delivery to the Tenant. The Effective Vacancy date on the Notice was January 11, 2014. The Landlord's Agent said the Tenants are living in the unit and the Landlord's Agent requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that the Tenants have unpaid rent of \$500.00 for December, 2013 and \$800.00 for each month of January, February and March, 2014. The Tenant said he paid \$350.00 by cheque for December, 2013 and the Landlord had given him a credit for work he had done on a tractor in the amount of \$300.00. The Tenant said he has unpaid rent for December, 2013 but he thought it was in the amount of \$50.00. The Tenant also agreed he has not paid the rent for January, February or March, 2014.

The Landlord said he did make an agreement to reimburse the Tenant for \$300.00 for tractor parts, but that was done for the November, 2013 rent not for the December, 2013 rent. The Landlord said there are unpaid rent of \$500.00 for December, 2013 as well as \$2,400.00 of unpaid rent for January, February and March, 2014.

The Tenant continued to say he has also made a monetary claim against the Landlord for problems though out the tenancy. The Tenant said he is claiming two month's rent in the amount of \$1,600.00 and \$200.00 for additional repair work done to the tractor. The Tenant continued to say the water in the unit did not work for two periods during the tenancy. The first time was in July, 2012 and the water was off for 3 weeks before the Landlord repaired the well and got the water running again. The second time the water stopped working was in June, 2013 and the water was off for 6 weeks before it was fixed. The Tenant said this was a great inconvenience and could have had health implications.

The Landlord agreed these situations did happen with the water and the well. The Landlord said he was away when it happened and he did fix the well when he returned. The Tenant said the Landlord did not give him a contact number for emergencies when the Landlord was away so he had no one to call about the water issues. The Landlord agreed that he did not give the Tenant an emergency contact phone number.

Further the Tenant said the septic system on the property did not work correctly and sewer would back up into the Tenant's bath tub. The Tenant said this happened over a period of approximately 12 month and the Landlord although contacted many times about the problem did not fix the sewer system. The Tenant said he has suffered some health issues from this and the sewer back up was very inconvenient. The Landlord agreed this was the situation with the sewer. The Landlord's Agent said on December

18, 2013 he had the septic tank cleaned out and that resolved the sewer issues. The Tenant agreed the sewer has been working since the tank was cleaned out.

The Tenant provided a Witness M.W. who gave affirmed testimony that there was no water at the unit on two occasions and the sewer at the rental unit backed up for approximately 12 months. The Witness also said he had delivered the Tenant's rent payments on 3 or 4 occasions, but he could not remember when.

The Landlord said in closing that he wants to end the tenancy and repair the property so that he can sell it. The Landlord said he is not disputing the water and sewer issues.

The Landlord's Agent requested an Order of Possession for as soon as possible if the Tenant's application is unsuccessful.

The Tenant said in closing that he only has \$50.00 in unpaid rent for December, 2013 and because of the issues with the water and sewer and because the Landlord did not provide him with an emergency contact number the Tenant is requesting \$1,600.00 in compensation for loss of quiet enjoyment of the rental unit. As well the Tenant said he is requesting \$200.00 for repair costs to the tractor.

Analysis

Section 26(1) says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenant does not have the right to withhold all or a portion of the rent from the Landlord when it is due therefore; I find the Tenant has not established grounds to be granted an order to cancel the Notice to End Tenancy. The Landlord's 10 Day Notice to End Tenancy dated January 1, 2014 stands in effect and consequently, I find pursuant to s. 55(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

Section 32 (1) says a landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

As the Landlord did not dispute the water and sewer issues, I find the Landlord did not meet his obligations to maintain the unit, site or property and this resulted in a loss of services and quiet enjoyment of the rental unit as well as potentially causing the Tenant health issues. Consequently I award the Tenant the equivalent of 2 month's rent in the amount of \$1,600.00 for loss of services and quiet enjoyment of the rental unit.

With respect to the Tenant's claim for reimbursement of \$200.00 for the tractor repairs it is unclear what agreement was made between the parties with respect to compensation for work done to the tractor and whether or not compensation was paid or not or if the tractor was part of the tenancy at all. The Tenant said the tractor was part of the tenancy and the Landlord agreed to pay for the work on the tractor. The Landlord says the tractor was there for the Tenant to use but it was not part of the tenancy and he did not agree to more than \$300.00 for parts for the tractor which he paid in November, 2013 by giving the Tenant a rent credit. The burden of proving a claim lies with the applicant and if it is only one party's word against the other party's word the burden of proof is not met. Therefore, I dismiss the Tenant's claim of \$200.00 for repairs to the tractor because of a lack of evidence.

Further as the tenancy is ending I dismiss the Tenant's request for the Landlord to complete emergency repairs.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the tenant is entitled to monetary compensation pursuant section 67 in the amount of **\$1,600.00** for loss of services and quiet enjoyment of the rental unit and I grant an Order in that amount. This Order must be served on the landlord and may be filed in the Provincial Court (Small Claims) 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: March 04, 2014

