



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; for Orders for repairs and emergency repairs; and, authorization to reduce rent for repairs, services or facilities not provided. The landlord did not appear at the hearing. The tenant testified that on January 23, 2014 he sent the hearing documents to the landlord via registered mail. The tenant provided a registered mail receipt, including tracking number, as proof of service. I was satisfied the landlord has been served with the hearing documents and I continued to hear from the tenant without the landlord present.

I noted that the rental unit address identified on the Application was different than the address used by the landlord in preparing the 1 Month Notice. The tenant explained that the property is a corner property and he used the legal address as seen on the water disconnection notice; whereas, the landlord used the adjacent street name where the driveway is located. For purposes of this decision I am satisfied that the tenant and the landlords attempted to identify the same property.

Issue(s) to be Decided

1. Is the 10 Day Notice to End Tenancy for Unpaid Rent valid and enforceable?
2. Is it necessary to issue orders to the landlord for compliance, repairs and/or emergency repairs?
3. Is the tenant authorized to reduce rent for repairs, services or facilities not provided?

Background and Evidence

The tenant began residing in to the rental unit approximately 1.5 years ago with a former tenant. Starting in November 2013 the tenant was the only occupant of the rental unit and started paying rent of \$1,000.00 per month to the landlord via electronic transfer. There is no written tenancy agreement with the tenant.

The tenant withheld \$200.00 of the monthly rent due for January 2014 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit. The landlord identified a former female tenant as the tenant on the 10 Day Notice. I heard that the person identified as the tenant on the 10 Day Notice moved out of the rental unit approximately two years ago. The tenant suspects the landlord named the former female tenant as the tenant because that is the last written tenancy agreement the landlord prepared for this unit.

In addition to cancelling the Notice, the tenant is seeking to have the landlord comply with the Act with respect to repairing and maintaining the property; serving proper notice of Entry; and fair allocation of the utility bills.

In filing this Application, the tenant identified repairs that have been outstanding for quite some time, namely:

- Front door lock needs repair;
- After three months, the sliding door repair still not completed (screws and trim still required);
- Power to the dishwasher is unsafe (powered by electric cord adjacent to water lines);
- There is no smoke detector in the unit; and,
- Baseboard heaters that do not work properly.

Since filing the Application the tenant purchased a new lock for the front door since he was no longer able to secure the unit and the tenant's requests for this repair were ignored. The tenant purchased a new lock at a cost of \$60.46 for which he has a receipt. The tenant has installed the new lock and given the landlord a copy of the key.

The tenant submitted that the above outstanding repairs have diminished the value of his tenancy by approximately \$100.00 to \$150.00 per month.

The tenant submitted that on January 27, 2014 that he also paid a \$220.47 water bill that is in the landlord's name because the tenant received three disconnection notices

at the property and the tenant did not want the water supply disconnected. The tenant stated that the basement unit is rented to another tenant yet he has paid for all of the water consumption.

The tenant submitted that the landlord has not given sufficient notice of entry. The tenant provided a copy of the Notice to Enter issued January 24, 2014 but not posted until January 28, 2014 with an entry date of January 30, 2014.

As evidence for this proceeding, the tenant provided a copy of: the 10 Day Notice; e-transfer documents confirming electric payment of rent; several emails exchanged between the landlord and the tenant; receipt for payment of the water bill and a water disconnection notice posted at the property; receipt for purchase of the lock; and, the Notice of Entry dated January 24, 2014.

Analysis

A landlord is required to prepare and give a tenant a written tenancy agreement; however, the Act also recognizes the formation of a tenancy that is entered into by oral, express or implied agreement.

In this case, I was presented evidence by the tenant that he has been paying rent to the landlord, as evidenced by the electronic transfer documents, and in an email from the landlord to the tenant she states: “[name of tenant] unfortunately you cannot just not pay your rent.” [my emphasis added]

Considering the above, and taking into account the former female tenant has not resided at the rental unit for approximately two years, I find a tenancy formed with the tenant and the landlord has not correctly identified the tenant in issuing the 10 Day Notice. **Therefore, I find the Notice issued on January 17, 2014 is invalid and it is set aside.**

As the tenant was cautioned during the hearing, a tenant may not withhold rent, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides very limited circumstances when a tenant may legally withhold rent.

I find I was not provided evidence to support a legal basis for withholding \$200.00 from rent that was due January 1, 2014 and I find that shortfall of \$200.00 is still owed to the landlord. Nevertheless, with this decision **I authorize the tenant to withhold the following amounts from rent otherwise payable to the landlord.**

1. New lock

The Act provides that emergency repair includes a repair to: “damaged or defective locks that give access to a rental unit”.

When a lock no longer works and the landlord does not make the repair despite requests to do so by the tenant, the tenant may make this emergency repair and recover the cost from the landlord upon presentation of the receipt.

I am satisfied the tenant made this emergency repair in order to secure the rental unit because the landlord would not take action within a reasonable period of time. Therefore, I authorize the tenant recovery of \$60.46 from the landlord by withholding this amount from rent otherwise payable to the landlord.

I further order the tenant to produce a copy of the receipt to the landlord.

2. Smoke detector

The tenant is authorized to purchase a smoke detector for the rental unit and deduct the cost of the smoke detector from rent. The tenant must provide the landlord with a copy of the receipt.

3. Outstanding repairs

I accept the submissions before me that the landlord has failed to make necessary repairs in a timely manner despite the tenant’s request for repairs.

I order the landlord to satisfy the repair orders contained in this decision by March 31, 2014. If the landlord fails to comply with the repair order I authorize the tenant to reduce the monthly rent payable to the landlord by \$150.00 until such time the landlord completes the repairs and gives the tenant written notice that the repairs are complete. If the tenant is of the position the repairs have not been made the tenant is at liberty to file another Application for Dispute Resolution seeking further remedy.

4. Filing fee

Having found merit with the tenant’s application I award recovery of the \$50.00 filing fee from the landlord. Therefore, I authorize the tenant to withhold \$50.00 from rent otherwise payable to the landlord to recover this award.

Orders for repairs

I am satisfied that the tenant has requested repairs of the landlord and the landlord has not responded to the request sufficiently. Therefore, I order the landlord to do the following by the end of March 31, 2014:

1. Finish installing screws and trim on sliding door.
2. Provide electric connection to dishwasher that complies with building laws.
3. Inspect and repair or replace baseboards that are not working.

Orders for compliance

1. I am satisfied the landlord has violated the Act with respect to the Notice of Entry and I order the landlord to refrain from entering the premises unless the landlord meets the criteria of section 29 and 90 of the Act. I have provided sections 29 and 90 with this decision for the parties' reference.

It is important for the landlord to take into consideration that when a Notice of Entry is posted on the door of the rental unit, the tenant is deemed to receive the Notice three days later. Therefore, when posting a Notice of Entry, the landlord may not enter the unit until the fourth day after posting.

2. The tenant has paid the water bill that reflects water consumption on the property and this includes water used by another tenant. As provided in Residential Policy Guideline 1, under the heading Shared Utility Service, it is unconscionable for one tenant to pay for a utilities used by another tenant. Nor is it up to one tenant to pursue the other tenant for payment of shared utilities. As such, the landlord is responsible for compensating the tenant for utilities attributable to the other tenant. Allocating utilities must be made on a reasonable basis such as the number of occupants using the utility, the square footage of the rental units, and the like. It is between the landlord and tenant to negotiate and agree upon a reasonable method of allocating shared utilities.

In light of the above, I order the landlord to compensate the tenant for a portion of the water bill attributable to the landlord's other tenant. If this is not done to the tenant's satisfaction the tenant is at liberty to file another Application for Dispute Resolution to seek further remedy.

Conclusion

The 10 Day Notice to End Tenancy is invalid and is of no effect; however, I find the tenant still owes the landlord \$200.00 in rent for the month of January 2014.

In this decision, I have authorized the tenant to make certain deductions from rent otherwise payable to the landlord.

In this decision, I have ordered the landlord to make certain repairs by March 31, 2014 and I have ordered the landlord to comply with the Act.

The tenant has been given liberty to reapply should the landlords fail to comply with my orders.

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 13, 2014

Residential Tenancy Branch

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

When documents are considered to have been received

90 A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:

- (a) if given or served by mail, on the 5th day after it is mailed;
- (b) if given or served by fax, on the 3rd day after it is faxed;
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;
- (d) if given or served by leaving a copy of the document in a mail box or mail slot, on the 3rd day after it is left.

[my emphasis added]

