



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NACEL PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, ERP, MNDC, MNR, OLC, RP, RR, MND, OPB, OPR

Introduction

In the first application the tenant seeks to cancel a ten day Notice to End Tenancy for unpaid rent, and for orders for repairs, rent reduction and compensation for failure to repair. In the second application the landlord seeks an order of possession pursuant to the ten day Notice, a monetary order for rent, damages for unspecified loss and an order of possession alleging the tenant has breached an agreement with the landlord.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either side is entitled to any of the relief requested?

Background and Evidence

The rental unit is a three bedroom townhouse. The tenancy started in September 2013. The monthly rent is \$1395.00. The landlord holds a \$700.00 security deposit.

The tenant is one of two tenants under the tenancy agreement. The second tenant is neither an applicant nor a respondent.

It is agreed that the tenants failed to pay the February 2014 rent in full. According to the tenant Ms. K., the tenants held back \$679.85 for emergency repairs on instructions from the Residential Tenancy Branch.

She says that she and her family were without heat. They were able to effect a repair by replacing the thermostat or a part of it at a cost of \$35.00. The balance of the holdback was for ten days of Hydro and the inconvenience of living ten days without heat.

The landlord's representatives say they were informed of a heating issue by an email on January 13th. They say they made numerous attempts to attend and diagnose the problem but were refused five times until gaining entry on February 21st.

In response the tenant says she had been ill and so denied access.

Analysis

Section 26 of the *Residential Tenancy Act* (the "*Act*") makes it clear that a tenant must pay the rent even when a landlord is in breach of a tenancy agreement or the *Act* or regulations. However, in certain circumstances, in the case of emergency repairs, a tenant may withhold rent.

Section 33 of the *Act* provides:

Emergency repairs

33 (1) In this section, "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) **the tenant has made at least 2 attempts to telephone**, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) **following those attempts, the tenant has given the landlord reasonable time to make the repairs.**

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

(my emphasis)

In this case I find that even if the tenants did notify the landlord about a heating problem they did not give the landlord a reasonable opportunity to make the repairs, nor have they given the landlord a written account of the repairs or a receipt or receipts. The tenants were therefore not entitled to withhold any of the February rent. As a result the ten day Notice to End Tenancy was a valid Notice and pursuant to s.46 of the *Act*, caused this tenancy to end on February 17, 2014. Further, the landlord is entitled to recover the \$679.85 unpaid February rent plus the claimed \$50.00 late fee as per the tenancy agreement.

At this hearing tenant relayed a variety of complaints about the rental unit, including a roof leak, a non functioning gas fireplace, a leaking sink and silverfish being in the apartment. It is far from clear that the tenants have formally notified the landlord of any of these issues. In any event, I accept the landlord's representatives' evidence that they have been denied entry to inspect the rental unit. If they cannot inspect it, they cannot reasonably repair it. I dismiss this portion of the tenant's application.

During the hearing the tenant reported that she had amended her claim to include a request to cancel a one month Notice to End Tenancy for cause. There is no evidence of such an amendment on the Residential Tenancy file and the landlord's representatives deny knowledge of the amendment. I therefore decline to consider it. The tenant is free to make a separate application in that regard.

The landlord has also requested an order of possession for the breach of an agreement. It appears the landlord is referring to the tenancy agreement. In such a case a landlord

must issue a Notice to End Tenancy for breach of a material term of a tenancy agreement under s. 49(1)(h) of the *Act*.

Conclusion

The tenant's application is dismissed. The landlord's application is allowed. The landlord will have an order of possession effective at one o'clock in the afternoon of March 31, 2014.

The landlord is entitled to a monetary award of \$729.85 as claimed, plus the \$50.00 filing fee. I authorize the landlord to retain the \$700.00 security deposit in reduction of the amount awarded. There will be a monetary order against the respondent tenant for the remainder of \$79.85

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 28, 2014

Residential Tenancy Branch

