



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

The tenant applies for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities), and also seeking 7 other orders. The landlord applies for an Order of Possession and a Monetary Order.

Many of the issues the tenant wishes to have resolved at this hearing are not related in law or fact, and in particular are not related to the key issues of the ending of the tenancy, the payment of rent, and the disputed 10 day notice. One of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). It is not possible within this context to deal with a wide array of issues of concern to the tenants in one short hearing. Accordingly, those issues that are not related in fact and law to the key claim regarding the notice of the end of this tenancy, are not dealt with in this decision, and are all dismissed pursuant to Rule 2.3, with liberty to re-apply.

Issues to Be Decided

- Is the 10 day Notice to End Tenancy (the "Notice") received on or about March 5, 2014 by the tenant, effective to end this tenancy, and entitle the landlord to an Order of Possession, or should the Notice be cancelled, and the tenancy continue?
- Is there rent money due and payable by the tenant to the landlord, or money owed by the landlord to the tenant that offsets any of such rent?

Background and Evidence

The tenant moved into this home on or about the end of June, 2013. She entered into an agreement with a former tenant of that home, who was renting the entire house. Under that sub-tenancy, she was entitled to the exclusive use of a bedroom and some common areas, and her rent was \$425.00 per month. That former tenant's tenancy ended in September, 2013. The tenant then moved into a different bedroom (the one formerly occupied by the former tenant) but continued to pay the same amount of rent of \$425.00 to the landlord.

The tenant incurred an emergency repair expense related to the washer. She had called the landlord repeatedly to replace or repair the washer which had started to smoke on use. The landlord failed to do so in a timely way, and when a fire began at the back of the washer, the tenant arranged for the repair of the washer at a cost of \$260.00. The receipt for this repair was provided to the landlord, and the sum of \$260.00 was deducted from rent for February by the tenant.

The tenant also incurred an emergency repair related to a plumbing water leak. She paid the sum of \$50.00 to have the leak repaired, provided the receipt to the landlord, and deducted this sum from February's rent as well.

No further rent for February was paid, and no subsequent rent has been paid by the tenant. The tenant believes the landlord illegally entered her premises and stole money from her. The tenant did not witness the theft, but has reported it to the police.

The landlord acknowledges she entered the premises, but denies stealing the tenant's money.

Analysis

Once the former tenant no longer rented the premises, the sub-tenancy of the tenant also ended. At that time she effectively began a new tenancy with the landlord. I accept that this new tenancy permitted her the exclusive use of a bedroom and ensuite, and the right to use of common areas in the home. I further accept that the rent for the premises was \$425.00.

Section 26(1) of the Residential Tenancy Act requires that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. This means the tenant was required to pay rent on the first day of each month, even though the landlord had not have provided certain services, or made necessary repairs.

An exception to this rule is a tenant is entitled to deduct money from rent that was expended on legitimate emergency repairs. The protocols set out in section 33 of the Residential Tenancy Act must be met, but in this case I am satisfied that the tenant has met those requirements, and was entitled to deduct the sums of \$260.00 and \$50.00 from her rent for February. Any other claims by the tenant did no result in any right to withhold or not pay rent.

The landlord was therefore entitled in law to serve the notice ending this tenancy, when the balance of February's rent of \$115.00 was not paid, and when subsequent rent was

not paid. Upon receipt of the notice on or about March 5, the tenant should have paid such rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so.

The notice is therefore found effective to end this tenancy, and the landlord has established a right to possession. The tenant's claim to have the notice cancelled is dismissed.

The tenant remains in possession, and now owes rent for February (115.00), March (\$425.00), and April, (including the landlord's projected loss of rent to the end of April, of \$425.00), plus \$50.00 as recovery of the landlord's filing fee, for a total of \$1,015.00.

Conclusion

The tenants' claim to cancel the notice ending the tenancy is dismissed. Pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenant. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court for enforcement.

The landlord is entitled to an award of \$1,015.00, representing the rental arrears and the recovery of the filing fee.

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: April 10, 2014

Residential Tenancy Branch

