



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNR, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. A Monetary Order for the cost of emergency repairs – Section 67;
4. An Order for a rent reduction - Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the Hearing the Tenant stated that no evidence was received from the Landlord. The Landlord states that they did not provide the Tenant with a copy of the evidence package as they did not know this was required. It is noted that the Landlord’s evidence package provided to the Residential Tenancy Branch consisted of a written statement, a copy of the tenancy agreement, a copy of the tenant’s rent cheque dated March 1, 2014, an invoice dated August 7, 2012 and an apparent restaurant review. No accounting records were included in the materials. As I am prepared to take oral evidence on submissions in relation to the Landlord’s materials but considering that the Landlord did not provide the Tenant with a copy of the evidence I find that the to consider supporting documents would prejudice the Tenant. The Landlord not seek an adjournment and I therefore decline to consider the Landlord’s evidence package.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on February 19, 2011. The Tenant submissions indicate rent of \$1,200.00 is currently payable and the Landlord state that \$1,250.00 is payable. There is no dispute that the Landlord has never provided a rent increase notice. There is no dispute that rent is payable each month on the first day of the month.

On March 6, 2014 the Landlord gave the Tenant a one month notice to end tenancy for cause (the "Notice") that lists the following reasons:

- The tenant is repeatedly late paying rent.; and
- The security or pet deposit was not paid within 30 days.

There is no dispute that the Tenant was late paying rent for March 2013. Prior to this date the Landlord states that the Tenant was late as the Tenant "probably" paid a sum on January 5 and the remainder was paid later. The Landlord states that the Tenant paid the rent for December 2013 on about the 5th and November 2013 rent was paid late. The Landlord states that the Tenant paid cash for all rents except the March 2014 rent as the tenancy agreement requires cash payments and that receipts were provided for some rents, not all. The Landlord states that the Tenant was also late paying rents in 2012.

The Tenant states that the Landlord refused to provide receipts for the cash payments and that the March 2014 rent cheque was a day late due to the Tenant wanting to ensure a paper trail of the payments. The Tenant states that he has been late on occasion but only because the Landlords were not available on the same day as rent was payable. The Tenant states that the Landlord never said anything to the Tenant about late rent payments. The Tenant denies that he was late paying rent on the dates stated by the Landlord other than the March 2014 payment. The Landlord states in response that the Landlord refused to take cheques and that the Tenant never suggested the provision of post dated cheques.

The Landlord states that the Tenant refused to pay the security deposit and that the Landlord was being nice by not taking a security deposit at the outset and agreeing to rent the unit to the Tenant anyway. The Tenant states that the Landlords agreed to accept a lump sum of cash in the amount of \$7,500.00 in advance for the first seven months of the tenancy and that this included the security deposit. The Tenant submits that the rent payable starting the eighth month was \$1,100.00 per month. The Tenant provided a schedule of the rents paid monthly from the onset of the tenancy.

The Tenant states that the unit is heated primarily by a wood stove and that on February 7, 2014 smoke started filling the unit. The Tenant states that he informed the Landlord that the chimney to the stove was blocked and asked them to make repairs. The Tenant states that the Landlord attended the unit and tried to clean the chimney but was unable to do so and that the Landlord then informed the Tenant not to use the wood stove until it was fixed. The Tenant states that as this was the primary source of

heat to the unit, as it was a cold period and as no repairs were made over the following three days, the Tenant had the chimney repaired as an emergency. The Tenant states that the repair person informed the Tenant that the chimney had not ever been cleaned and that there was a blockage at the top of the chimney. The Tenant claims \$304.50 for the cost of repairs and \$100.00 for the loss of use of the wood stove over three days.

The Landlord states that the unit's main source of heat is through baseboard heaters. The Landlord agrees that the chimney had not been cleaned previously and denies that the smoke in the house was caused by a blocked chimney. The Landlord states that the Tenant used wet wood in the stove causing the smoke. The Landlord states that the Tenant dismantled the stove pipes to the chimney before telling the Landlord there was a problem. The Landlord states that the chimney was not repaired by the Landlord as the Tenant had broken the pipes. The Tenant states that no pipes were removed and that the Tenant tried to clean the pipes but that the Tenant was not able to clean all the way up. The Tenant states that the BTU's for the wood stove is 70,000 and that the BTU's for the baseboards is 6,000.

The Tenant states that at the onset of the tenancy the Landlord informed the Tenant that the water tank was too small for the unit and would be replaced with a larger one. The Tenant states that this has not been done and as a result the Tenants have not had use of the double soaker Jacuzzi tub that was a main feature of the unit. The Tenant states that the water tank contains 48 gallons and only fills to the ankles in the tub. The Tenant states that the unit contains a washing machine, dishwasher, shower and the Jacuzzi and requires an 80 gallon tank. The Tenant states that the Jacuzzi is the only tub in the unit. The Tenant claims a rent reduction of \$100.00 per month from March 1, 2014 until the water tank is replaced. The Tenant states that he formally requested this item in a letter to the Landlord dated April 14, 2013. The Landlord denies telling the Tenant that the water tank would be replaced and denies that the soaker tub is a main feature of the unit. The Landlord states that the Tenant was told at the onset of the tenancy that the water only goes up $\frac{3}{4}$ of the way in the tub.

The Tenant states that he has asked the Landlord for several other repairs but is not seeking compensation for these repairs as he requested these repairs on April 17, 2014 and wants the Landlord to complete the repairs. The Landlord states that the repairs can be done over the next couple of weeks.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the Landlord's lack of accounting records and rent receipts, I find on a balance of probabilities that the Landlord has not substantiated that the Tenant has been repeatedly late paying rent. Given the undisputed evidence that the Tenant paid a lump sum amount at the outset of the tenancy, the Landlord's lack of accounting records of this payment, and taking into account the amount of time

that has passed since the onset of the tenancy, I find that the Landlord's have not proven on a balance of probabilities that the Tenant failed to pay a security deposit or that a further payment was required. As the Landlord has not substantiated either of the reasons for the Notice I find the Notice to be invalid and that the Tenant is entitled to a cancellation of the Notice.

Section 26 of the Act provides that a landlord must provide a receipt for any rents paid in cash. Given the Landlord's evidence of no rent receipts, I find that the Landlord is not in compliance with the Act. However since the Tenant has not sought an order for the Landlord's compliance I only strongly encourage the Landlord to issue receipts for any cash received. I also strongly encourage the Landlord to accept post-dated cheques so as to avoid not being available for a cash payment on the day that rent is due.

Section 33 of the Act provides that emergency repairs include repairs to a primary heating system and that 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.

Based on the undisputed evidence that the Landlords were informed of a problem with the use of the woodstove, accepting the Tenant's evidence that this was a primary source of heat, noting that the Landlord did not act for three days over during the winter season, and considering the Tenant's evidence of accounting for the repairs, I find that the Tenant has substantiated an entitlement to compensation of **\$304.50** for the cost of emergency repairs. Given the significant discomfort associated with this loss of heat, I find that the amount claimed by the Tenant to be reasonable and I find that the Tenant has substantiated an entitlement to **\$100.00**. I am unable to determine how the Landlord's evidence that the Tenant took the pipes off is relevant to the obligation of the Landlord to attend to emergency repairs.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the Tenant's undisputed evidence that the Jacuzzi is the only tub in the unit, I find this item to be at least a strong feature of the unit and one that would be expected to be used as intended. I also find the Tenant's undisputed evidence of the size of the water tank requirements to support that the Landlord knew at the outset that the size was insufficient. I therefore accept the Tenant's believable evidence that the Landlord promised a bigger tank and has failed to live up to this agreement. As such I find that the Tenant has substantiated its claim for compensation. I make this compensation in the form of a lump sum of **\$100.00** and a rent reduction of

\$100.00 per month commencing June 1, 2014 should the Landlord not provide the Tenant with a water tank with at least the capacity of 80 gallons before this time. This reduction will continue until the Landlord replaces the water tank or the tenancy ends.

Given the Landlord's agreement to address the remaining repairs requested by the Tenant, I give the Tenant leave to reapply should the Landlord fail to act as obliged under the Act in relation to the maintenance of the unit and the requirements under the tenancy agreement.

I note that given the lack of any rent increase notices and based on the Tenant's evidence of rents that have been paid to date, I find that rent of \$1,200.00 is currently payable. As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$554.50**.

Conclusion

The Notice is cancelled and the tenancy continues. I order the Tenant to reduce June 2014 rent by \$554.50 in full satisfaction of the claim. I order the Tenant to reduce June 2014 and ongoing rent by a further \$100.00 on the conditions set out above.

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: May 09, 2014

Residential Tenancy Branch

