



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, LAT, RR, MNR

Introduction

This hearing dealt with an application by the tenant to cancel two notices to end tenancy, for a monetary order for the cost of emergency repairs, for an order allowing the tenant to change the locks of the rental unit, and for an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notices to end tenancy be cancelled?

Is the tenant entitled to a monetary order for the cost of emergency repairs?

Is the tenant entitled to an order allowing him to change the locks of the rental unit?

Is the tenant entitled to an order allowing him to reduce rent for repairs, services, or facilities agreed upon but not provided?

Background and Evidence

The parties agree the tenancy started January 15, 2014 and the tenant is obligated to pay rent of \$650.00 monthly in advance on the first day of the month. The tenant also paid a security deposit of \$320.00.

The landlord gave evidence that he served the tenant with a notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the tenant's door on May 6, 2014. The Notice specifies a move-out date, or effective date, of May 16, 2014 and says the tenant failed to pay rent of \$484.80 that was due on May 1, 2014.

The parties agree that the tenant deducted the cost of two repair bills totalling \$484.80 from his May 2014 rent. The tenant's position is that he was entitled to deduct this amount for the cost of emergency repairs pursuant to Section 33. The tenant confirmed that if he is allowed to deduct these amounts from his rent, then he does not seek a monetary order for the cost of emergency repairs.

The tenant gave evidence that he told the landlord there were problems with the bathroom about two weeks after he moved in. He advised the landlord that there was very poor water pressure in the shower. Also, the toilet was difficult to flush; it was necessary to hold the lever down for the whole flush. There were leaks under the bathroom and kitchen sinks. Also, the only electrical outlet in the bathroom did not work. The tenant said he offered to get the landlord some quotes, since he knows people who work in the trades.

The tenant's evidence is that he gave the landlord some quotes in approximately mid-March, however the landlord said he would bring in his own trades people. The landlord's plumber came in around the third week of March. The plumber was able to improve water pressure in the shower, and worked on the bathroom and kitchen sinks. The plumber said the tank mechanism in the toilet needed replacing and he would speak to the landlord. The tenant's evidence is that he did not hear from the plumber again.

The tenant's evidence is that he contacted the landlord again by text message. He says he texted the landlord on March 12th when the plumber and electrician did not come the previous weekend. The tenant's evidence is that he continued to phone and text the landlord but the landlord did not respond.

The tenant's evidence is that the toilet became worse in approximately the first week of April. The lever would no longer work and it was necessary to reach into the toilet tank to cause the toilet to flush. On May 1st, the tenant arranged for a plumber and an electrician to come in. The plumber replaced the tank mechanism in the toilet at a cost of \$160.00; the electrician repaired the bathroom electrical outlet at a cost of \$324.80. The tenant says he called his landlord after the repairs were done but his landlord did not answer. The tenant then gave his landlord a money order for the difference between his rent (\$650.00) and the cost of repairs, along with a note explaining what he had done and copies of the repair invoices.

The landlord gave evidence that the tenant did not need to get any repair work done himself, since the landlord had already had it done or arranged to have it done. The landlord's evidence is that the tenant told him sometime in March that there was a

problem with the shower and the toilet would not flush properly. The landlord says that his plumber went in on approximately April 12th. At that time, the landlord says the plumber and the tenant exchanged telephone numbers because the plumber was going to have to come back. He says the plumber went back twice, but the tenant was not home. He says he did not hear from the tenant again about the problem.

The landlord says the tenant told him that the electrical outlet in the bathroom did not work in March sometime. He says he arranged for an electrician to go in sometime in April, however the tenant texted him late the previous night to say that he would not be home at the time of the appointment. The electrician went to the rental unit the next day, but the tenant was not home. The landlord says he did not hear from the tenant again.

The landlord said he has a text message from March 29, 2014 from the tenant saying that the plumber had arrived at the rental unit. The landlord's evidence is that he joined the tenant and plumber, and witnessed the tenant and plumber exchange phone numbers so that the plumber could come back and install the new toilet tank mechanism. The landlord says he received a text from the tenant on April 5 to say that the toilet was not emptying. The landlord said he responded and asked the tenant to contact the plumber. The landlord spoke to the plumber later that day and the plumber told him he would go to the rental unit. The landlord said he did not hear anything about the toilet after that.

The landlord gave evidence that he also served the tenant with a notice to end tenancy for cause (the "Cause Notice") by posting the Cause Notice on the tenant's door on approximately May 13, 2014. The Cause Notice provided in evidence contains only the first of two pages. The tenant's evidence is that he only received the first page of the two page notice, with the first page photocopied again on the back of the first page. The landlord's evidence is that there was a second page, however he says his wife prepared the Notice. The landlord was not able to describe the second page of the Cause Notice.

The tenant also made a claim regarding storage space at the rental unit. The tenant confirmed that the following two claims relate to use of the storage space: for an order allowing the tenant to change the locks of the rental unit and for an order allowing the tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

The tenant says that after he moved into the rental unit he asked the landlord if he could use a storage shed on the property for storage. His evidence is that the landlord agreed and said he would give him a key. The tenant's evidence is that the upstairs tenant

gave him a key for the storage shed. He says he cleaned the shed and put some of his belongings in it. The tenant's evidence is that about two months later, the landlord cut his lock off the shed and left the tenant's belongings on the lawn.

The landlord denies that he told the tenant he could use the storage shed. The landlord's evidence is that he keeps the lawnmower there. The landlord notes that the tenancy agreement does not indicate that storage is included in the rent. The landlord provided a copy of a letter from the upstairs tenant in evidence, in which the upstairs tenant says he told the tenant that the storage shed was not for tenants. The upstairs tenant does not indicate that he provided a key to the storage shed to the tenant. The tenant says that he did not receive the upstairs tenant's letter in evidence.

The tenant seeks access to the storage shed. Alternatively, the tenant seeks a rent reduction of \$100.00 per month for having to rent outside storage, on the basis that storage was promised to him.

Analysis

Section 33 of the Act permits a tenant to deduct the cost of emergency repairs from the rent in certain circumstances. First, the repairs must be "emergency repairs" within the meaning of Section 33(1):

(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.

I find that the toilet repairs became "urgent" at the point when the toilet could no longer be flushed by holding down the lever. A functioning toilet is a necessary thing and there is only one toilet in the rental unit. As well, I find that the toilet repairs were necessary for the health or safety of the tenant. The toilet repairs also meet the third criteria in

Section 33(1), in that I find they were for the purpose of repairing a damaged plumbing fixture. For those reasons, the toilet repairs meet the definition of “emergency repairs” in Section 33.

I find that the electrical repairs do not meet the definition of “emergency repairs” in Section 33, since there was no evidence of any urgency to obtaining a functioning electrical outlet in the bathroom. Not having a working electrical outlet in the bathroom might be an inconvenience but I find it was not an urgent issue.

Since the electrical repairs do not meet the definition of “emergency repairs” in Section 33, the tenant was not justified in withholding an amount of rent to compensate for the cost of the electrical repairs. I find it is not appropriate to cancel the Notice, since the tenant withheld an amount from his rent that he was not entitled to withhold. **Since the Notice is not cancelled, the tenancy is at an end.**

I note that, while I have found that the toilet repairs are “emergency repairs”, there are other criteria to be met in Section 33 before a tenant is entitled to withhold the repair costs from the rent. Since I have found that the electrical repairs are not “emergency repairs”, I have not continued the Section 33 analysis to determine whether the tenant was ultimately justified in withholding the cost of the toilet repairs.

Since the landlord did not provide evidence that the second page of the two-page Cause Notice was served on the tenant, the Cause Notice is hereby cancelled. However, this is moot since the Notice (above) is effective in ending the tenancy.

I find the tenant does not require a monetary order for the cost of the electrical and toilet repairs, since he has already deducted those amounts from his May 2014 rent. That claim is therefore dismissed.

I prefer the evidence of the landlord to that of the tenant regarding the storage shed. The evidence of the landlord is consistent with the written tenancy agreement, in which the box “storage” is not checked to indicate that storage is included in the rent. The landlord’s evidence is also consistent with the letter from the upstairs tenant. I note that the tenant says he did not receive that letter in evidence. However, even if I do not consider the letter from the upstairs tenant, I would still find that storage was not included in the rent on the basis of the written tenancy agreement.

Since storage was not included in the rent, I find the tenant is not entitled to an order allowing him to replace the lock on the storage shed. Also, the tenant is not entitled to a

rent reduction to cover the cost of outside storage. Those claims are therefore dismissed.

Conclusion

The Cause Notice is cancelled. The rest of the tenant's claims are dismissed.

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: July 03, 2014

Residential Tenancy Branch

