



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNDC, RP, RR, MNR, MNSD, FF

Introduction

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

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67;
3. An Order for repairs – Section 32;
4. An Order for a rent reduction – Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2011 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. A Monetary Order for compensation – Section 67;
4. An Order to retain the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

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

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 Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to repairs?

Is the Tenant entitled to a rent reduction?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on November 15, 2011. Rent of \$900.00 is payable monthly on the first day of each month. At the onset of the tenancy the Landlord collected \$450.00 as a security deposit.

The Landlord states that the Tenant withheld \$1,000.00 of rents payable for May and June 2014 and claims this amount. The Tenant states that the Landlord agreed to the deduction in order to compensate the Tenant for damages arising from the presence of rats and that the Landlord confirmed this by email. The Landlord states that this was agreed to but that the Landlord later changed his mind. There is no dispute that July 2014 rent was paid in full.

The Tenant states that the Landlord failed to rid the unit of rats causing damage to the Tenant's couch. The Tenant states that the Landlord allowed the upper tenants to have a dog and that the tenants left the yard covered in feces. The Tenant states that the upper tenants also left garbage open and outside the house attracting wildlife. The Tenant states that the feces were never cleaned up after the upper tenants left. The Tenant states that as a result the Tenant lost use of the backyard.

The Landlord states that the upper tenants were told to clean the yard of feces and that this was done. The Landlord states that the yard has also been mowed and cleaned since the upper tenants left. The Tenant states that the lawn was mowed but nothing was removed and the articles and feces were simply mowed over with none of the clippings or garbage placed in the appropriate bins. The Landlord states that by July 6,

2014 the yard will again be inspected and cleaned of garbage and feces should any remain.

The Tenant states that the upper tenants caused noise and disturbed the lower tenants to the extent that the Tenant's daughter had to leave the unit for a month and a half. The Tenant states that the Landlord did nothing to address the noise complaints. The Landlord states that the upper tenants were spoken with and that the upper tenant and Tenant entered into a noise war that the Landlord could not resolve. The Landlord states that the upper tenancy ended on May 29, 2014 due to the non-payment of rent.

The Tenant states that the upper unit experienced a water leak that caused the ceilings in the kitchen and bathroom to be damaged. The Tenant states that the Landlord only attended the unit to look at the ceiling and has since failed to make any repairs. The Landlord submits that as a licensed plumber he knows that there are no problems as the leak came from a dishwasher that is no longer being used and that the kitchen ceiling is only damaged aesthetically. The Landlord states that he was not aware of any problem with the bathroom ceiling. The Landlord states that he will inspect the areas and made repairs to the ceilings by August 15, 2014.

The Landlord does not dispute that he entered the Tenant's unit without notice or permission and without an emergency on one occasion.

The Tenant claims \$10,000.00 for the losses claimed above.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rents are unpaid. Based on the undisputed evidence that the Landlord agreed to a reduction in rent of \$1,000.00 and considering the email from the Landlord to this effect, I find that the notice to end tenancy for unpaid rent is not valid as the rent was paid as agreed between the Parties for May and June 2014. The Tenant is therefore entitled to a cancellation of the notice to end tenancy and I dismiss the Landlord's application.

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. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As the Tenant has been compensated for the presence of the rats, I dismiss the Tenant's claim for any additional compensation in relation to the rats. I accept the evidence from the Landlord that the Tenant entered into a noise war with the upper tenants and I therefore find that the Tenant contributed to its own loss in relation to the noise and I dismiss the claim for compensation in relation to the noise. Given that the damage to the ceiling has not caused any loss of use of the unit and accepting that the Landlord will make the repairs to the ceiling, I dismiss the Tenant's claim for compensation with leave to reapply should the Landlord fail to make the repairs as agreed. Accepting the Tenant's evidence of the presence of feces and garbage on the lawn, I find that the Tenant did experience some loss of the yard and I find that the Tenant is therefore entitled to a nominal amount of compensation in the amount of **\$100.00**. Given the agreed evidence that the Landlord entered the Tenant's unit on one occasion without right I find that the Tenant is also entitled to a nominal amount of compensation in the amount of **\$200.00**. I order the Landlord to strictly adhere to the Act's provisions for entry into the unit. As the Tenant has been only somewhat successful with its application I find that the Tenant is entitled to half of the filing fee in the amount of **\$50.00** for a total entitlement of **\$350.00**. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$350.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 1, 2014

Residential Tenancy Branch

