



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Orca Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlords: OPR, MNR, MNSD, FF
Tenants (1st App) – MT, CNC, CNR, FF
Tenants (2nd App) – CNR, MNR, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought, in his first Application, more time to apply to cancel a notice to end tenancy and to cancel two notices to end tenancy. In his second Application the tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and his witness.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution for his first Application, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on April 24, 2014 and for his second Application by registered mail on May 7, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by the landlord on the 5th day after it was mailed.

Based on the testimony of the tenant, I find that the landlord has been sufficiently served with the documents pursuant to the *Act*. In addition, I note that the landlord had filed his own Application that included seeking a monetary order for unpaid rent and to retain the security deposit.

At the outset of the hearing the tenant testified that he has moved out of the rental unit, effective May 24, 2014. As such, I find that the tenant's first Application which was for more time to apply to cancel a notice to end tenancy and to cancel two notices to end tenancy is now moot. As such, I dismiss the tenant's first Application in its entirety.

I also note that in the tenant's second Application he had applied to cancel a notice to end tenancy. Again as the tenant has vacated the rental unit this issue is also moot and as such, I amend the tenant's second Application to exclude the matter of cancelling the notice to end tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to a monetary order for emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Act*.

Background and Evidence

The tenant submits that the tenancy began on July 12, 2012 as a month to month tenancy for the monthly rent of \$1,500.00 plus 33% of utilities due on the 15th of each month with a security deposit of \$750.00 paid.

The tenant submits that he had an agreement with the landlord that if there was anything wrong on the property the tenant could repair it and the landlord would reimburse the tenant. The tenant testified that based on this agreement that he did not contact the landlord prior to making any of these repairs.

The tenant has submitted the following 4 invoices:

- July 16, 2012 in the amount of \$350.00 for the removal and clean up of the residential property. The tenant submits that he took two loads of debris to the landfill;
- August 1, 2012 in the amount of \$725.00 for emergency water repair – kitchen shutoffs and main water valve. The tenant submits this represents 5 or 6 hours work at \$100.00 per hour plus supplies;
- December 1, 2012 in the amount of \$1,100.00 for emergency water diversion – basement began flooding during 3 day storm and he had to install down spouts

and tie into drainage. The tenant submits that this took 3 days at a cost of \$400.00 per day plus supplies; and

- Emergency Repair to main power supply to the house – the mast had been torn away by a moving truck. The tenant submits there was emergency response by police; fire; and the district as well as hydro. The tenant submits an overtime rate of \$100.00 per hour for two guys.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety of anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

As the invoice for July 16, 2012 is not for the purposes of making emergency repairs to leaking pipes or roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks or the electrical systems, I find that the work completed on July 16, 2012 does not constitute an emergency repair and I dismiss this portion of the tenant's Application.

As to the remaining invoices, I find that the work completed, as described by the tenant does fit the definition of emergency repairs. However, and despite the tenants submission that he had standing authorization from the landlord to make repairs to the property I find that for the purposes of reimbursement for emergency repairs the tenant

failed to comply with the requirement under Section 33 to contact the landlord at least twice before completing the emergency repair.

Therefore, I find the tenant has failed to establish that the landlord had violated the *Act* in regard to emergency repairs and in fact the tenant failed to comply with the requirements that a prerequisite to claiming for emergency repairs.

Conclusion

For the reasons noted above, I dismiss the tenant's Application in its entirety.

As to the landlord's Application, in the absence of the landlord or his agent, I dismiss the landlord's Application in its entirety.

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: June 13, 2014

Residential Tenancy Branch

