



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MNDC

Introduction:

This was an application by the tenant pursuant to the *Residential Tenancy Act* for orders as follows:

- a) To cancel a Notice to End the Tenancy for non-payment of rent dated July 9, 2014 pursuant to section 46;
- b) An order for a refund of rent pursuant to section 65 because of lack of maintenance contrary to section 32; and
- c) Recovery of the security deposit pursuant to section 38 of the Act.

SERVICE:

I find that the Notice to End a Residential Tenancy was served personally on the Tenant and the landlord admitted personal service of the application for dispute resolution. I find the documents were served pursuant to sections 88 and 89 of the Act.

Issues: Is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that he is entitled to a rent rebate for poor maintenance of the building?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenancy began on May 1, 2014. The current rent is \$755 and the tenant paid a security deposit of \$377.50 on April 18, 2014. The landlord's agent testified that the tenant failed to pay the rent for July and was served with a Notice to End the Tenancy on July 9, 2014 and no rent has been paid since. The tenant said he intended to vacate on September 30, 2014 and the landlord's agent requested an Order for Possession effective September 30, 2014.

The tenant testified he did not pay the rent because the landlord did not have the carpets washed before move-in as agreed, there were bugs and mice in his unit and the building had lots of used furniture dumped around outside. The landlord said that the carpets had been washed by a professional company (which she named), she said the building has a contract with a pest control company who has attended to the tenant's suite and most of the outside furniture has been removed. She said there are a lot of other apartments in the area and old furniture is often dumped; however, she mentioned that many tenants, including this one, retrieve some of the useful items. The tenant agreed the pest control company had attended and sprayed but said there were mice in his unit; the landlord said he had not mentioned the mouse problem at the time.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. Although the tenant disputed the Notice in time, none of his complaints constitute valid reasons to withhold his rent. I have therefore dismissed his application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 46 and has upheld the Notice. The landlord has made this request at the hearing. As a result I granted the landlord an Order for Possession effective September 30, 2014.

In respect to the tenant's complaints, the onus is on him to prove on a balance of probabilities that the landlord through act or neglect has failed in meeting their obligations to repair and maintain pursuant to section 32 of the Act and/or not provided to him what he bargained for. I find the landlord's evidence credible that they did wash the carpets before move-in and there is a pest control company on contract to deal with bug and mice issues. I find the landlord has not failed in their duty to maintain and repair. However, I find the evidence of the tenant credible that the carpets remain badly stained and cockroaches infested his unit at move-in. His evidence is well supported by his photographs. I find he did not get what he thought he had bargained for. Therefore, I grant him a rebate of rent of \$100 off the total owed to the landlord.

Conclusion:

I grant the landlord an Order for Possession effective September 30, 2014. I dismiss the tenant's application to set aside the Notice to End Tenancy; the tenancy is terminated.

I grant the tenant a rent rebate of \$100 which he may deduct from the total owed to the landlord. No filing fee is involved.

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: September 11, 2014

Residential Tenancy Branch

