



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a 10 Day Notice to End Tenancy for unpaid rent or utilities; for a Monetary Order for the cost of emergency repairs; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs; to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on July 10, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the tenants appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenants’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants’ application to cancel the 10 Day Notice to End Tenancy and for a Monetary Order for the cost of emergency repairs and I will not deal with the remaining sections of the tenants’ claim at this hearing.

Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End Tenancy cancelled?
- Are the tenants entitled to the cost of emergency repairs?

Background and Evidence

The tenant testified that their tenancy started on August 01, 2013 with a different landlord. When that landlord left the premises on November 01, 2013 the owner of the building and trailer became the tenants’ landlord. Rent for this unit is \$500.00 per month which included utilities.

The tenant testified that from November 01, 2013 the tenants have paid rent to this landlord. The tenant refers to the only rent receipt provided by the landlord on November 01, 2013 for \$500.00 which indicates that this is for rent and electricity. The tenant testified that in December, 2013 the landlord agreed the tenants did not have to pay rent in lieu of cleaning up after a previous tenant of the landlords. The tenant testified that they paid \$500.00 in rent for January, 2014 although no receipt was provided by the landlord.

The tenant testified that in February, 2014 the new occupants of the restaurant in the building realized that the tenants trailer is hooked up to their electrical meter and that they were paying the tenants’ electricity. The landlord approached the tenants and asked the tenants to pay \$1500.00 more for electricity used by the tenants. The tenant testified that they had to agree to pay \$50.00 more a month under duress in order to get their electricity put back on. The tenant testified that no Notice of rent increase was

given by the landlord, the landlord is not entitled to increase their rent within a year and the allowable rent increase should be lower than \$50.00. The tenant testified that for February, March and April the tenants paid \$550.00 in rent ; however, the landlord refused to provide a rent receipt.

The tenant testified that in May they lost their water into the unit due to a problem with the water lines which also resulted in the element of the hot water tank becoming burnt out. The tenants contacted the landlord about these issues and were told to contact the City and a plumber. The tenants did so and water was restored and a new heater element was fitted to the hot water tank. The tenant testified that the invoices were provided to the landlord for this work; however, the landlord refused to take them or to pay the invoices. The tenants have provided copies of the invoices, one for \$119.83 and one for \$399.51 in documentary evidence. The tenant testified that they had to pay these invoices. As the landlord has not reimbursed the tenants, the tenants have deducted these amounts from the rent.

The tenant testified that also in May, 2014 the landlord requested the tenants pay an amount of \$1,500.00 in rent to cover the repairs and served the tenants with a 10 Day Notice for this amount. The tenant testified that they reached an agreement, under duress, with the landlord to pay \$600.00 which was paid on May 14, 2014 in cash. The landlord would not provide a receipt for this payment. The tenant testified that they felt they had to pay this amount in order to get the water put back on in their unit.

The tenant testified that in June they did not pay all the rent as they were deducting the amounts of \$519.34 for the plumber's invoices. This left a balance for the invoices of \$19.34 which was applied to rent for July. The tenant testified that the landlord served the tenants with a 10 Day Notice to End Tenancy on June 23 in person which stated the tenants owed \$1,800.00. The tenant testified that they attempted to pay the balance of rent for July; however, the landlord refused to accept the rent and as the landlord insists that the tenants pay rent in cash they had no other means to pay the rent. The tenant testified that as they have now determined that they have overpaid the rent for February, March and April by \$150.00 and in May by \$100.00 the tenants also seek to have that offset against rent for July.

The tenant testified that in August, the landlord refused to accept the rent and the landlord has now served the tenants with another 10 Day Notice to End Tenancy. The tenant accepts that there is some rent outstanding for the latest Notice served in July but requires a Decision from this hearing to determine just how much is owed and as the landlord refused to accept the rent how they should pay it.

The tenants seek an Order to allow them to recover the cost of emergency repairs and to offset this against the unpaid rent for June, 2014. The tenants also seek to recover the \$50.00 filing fee from the landlord.

Analysis

The landlord did not appear at the hearing to dispute the tenants' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants' documentary evidence and sworn testimony before me.

With regard to the rent increase of \$50.00 per month I refer the parties to s. 42 and s. 43 of the Act which state:

Timing and notice of rent increases

42 (1) *A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

43 (1) *A landlord may impose a rent increase only up to the amount*

- (a) calculated in accordance with the regulations,*
- (b) ordered by the director on an application under subsection (3), or*
- (c) agreed to by the tenant in writing.*

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Consequently, I find the landlord is not entitled to increase the rent within 12 months; the landlord did not use an approved form and did not calculate a rent increase in accordance with the regulations. Had the landlord been able to increase the rent the most the landlord could have increased it to would have been 2.2 percent which I have calculated to be \$11.00 a month. I therefore find the landlord imposed an illegal rent increase and subsequently the tenants are entitled to deduct this from the rent owed. I have calculated the rent increase to be \$150.00 for February, March and April and \$100.00 for May. The total amount the tenants are entitled to deduct from rent for June is \$250.00

Furthermore, with regard to the emergency repairs I refer the parties to s. 33 of the Act which states:

33 (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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) 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.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

From the evidence presented I am satisfied that emergency repairs were made to provide the tenants with water and hot water to their unit. I am satisfied that the tenants contacted the landlord concerning the repairs and that the tenants paid for the repairs to an amount of \$519.34 and attempted to give the invoices to the landlord for reimbursement. As the landlord refused to reimburse the tenants, the tenants are entitled to deduct this amount from their rent for June and July, 2014. Consequently, the tenants owed \$250.00 in rent for June and I have deducted \$250.00 from the repair invoices. The balance of \$269.34 has been deducted from the rent owed for July, 2014. This takes the amount owed by the tenants for July's rent to be \$230.66.

The tenant testified that the landlord refused to accept the rent for July and August, 2014 and that these amount are still outstanding. I therefore find the amount owed to the landlord for July is \$230.66 and for August is \$500.00.

As there is deemed to be no rent outstanding for June, 2014 when the 10 Day Notice was served upon the tenants and the landlord has not appeared to present evidence that \$1,800.00 was outstanding, I therefore cancel the 10 Day Notice dated June 23, 2014 and the tenancy may continue at this time.

As the tenants claim has merit I find the tenants are entitled to recover the \$50.00 filing fee for this application and may deduct this amount from the next rent payment when it is due and payable.

Conclusion

The 10 Day Notice dated June 23, 2014 is cancelled.

The tenants are entitled to deduct both the cost of emergency repairs from rent owed for June and July and the overpayment of rent as detailed 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: September 05, 2014

Residential Tenancy Branch

