



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR OPR RR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) An Order of Possession pursuant to either sections 46 or 49 and 55;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- e) To cancel Notices to End Tenancy, one for unpaid rent dated August 27, 2014 and one for landlord's use of the property dated August 7, 2014;
- f) An Order that the landlord do necessary repairs pursuant to sections 32 and 33 of the Act;
- g) A monetary order or rent rebate as compensation for necessary repairs not done to the property; and
- h) To recover the filing fee for this application.

SERVICE

Both parties attended the hearing and each confirmed receipt of the Notices to End Tenancy dated August 7, 2014 for landlord's use of the property and dated August 27, 2014 for unpaid rent. They each confirmed receipt of each other's Application for Dispute Resolution. The Notice to End Tenancy for landlord's use of the property is dated August 7, 2014 to be effective October 8, 2014. The effective date on the Notice is automatically corrected to October 31, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a two month Notice to End Tenancy under section 49 of the Act must give a full two months' notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that rent is owed and they are entitled to an Order of Possession and a monetary order for rental arrears and to

recover the filing fee for this application? Or in the alternate, has the landlord proved on the balance of probabilities that he requires the property for his own use pursuant to section 49 and so is entitled to an Order of Possession?

Or is the tenant entitled to relief? Has the tenant demonstrated they are entitled to an Order to Repair and compensation for repairs not done and to recover filing fees for the application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced on January 1, 2013 on a fixed term lease to December 31, 2017, that rent is \$2100 a month inclusive and a security deposit of \$1050 was paid on November 20, 2012. The lease is in evidence. It is undisputed that the tenant did not pay rent for August 2014 and received a Notice to End Tenancy on August 27, 2014; she then paid rent by registered mail but the landlord did not claim the mail by September 4, 2014 as the landlord was on vacation for some of the time. The tenant said the rent was not paid on August 1, 2014 as she did not know the new landlord. The landlord said they had just purchased the home and the lawyer sent a letter to the tenant about the new landlord; the tenant denied receipt of this letter.

The tenant said they paid rent of \$1253.40 for September as they deducted \$849.60 for a new front door and lock; the old front door was an interior door and was insecure. Their insurer advised them that they must have a secure entry door for insurance purposes and they were intimidated by an unexpected visit from the new landlords whom they did not know. In evidence are letters from the tenant requesting the door be replaced dated August 9, 2014 and August 25, 2014 and a photograph of a reply from the landlord stating that their requests for repair were not allowed and they are taking back the 'house for self living'. The landlord said they were on vacation August 9 to 18th and did not get the letters but agreed they had left no emergency contact number for the tenants. The tenants have invoices to support their costs of replacing the door and have been reimbursed by deducting this amount from their rent.

The tenants provided a copy of the letter sent to the landlord listing many repairs that they consider necessary for health and safety. They said many of these items came to their attention when the home inspector for the purchasers was pointing them out. They request an Order that these repairs be done and a rent rebate until they are done. The parties discussed a possible buy out of the lease but were unable to agree on an amount.

In evidence are the Notices to End Tenancy, the tenancy agreement, photographs, registration receipts and written requests for repairs. On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

The onus is on each applicant to prove on a balance of probabilities their claim. I find the landlord has not satisfied the onus of proving they are entitled to end the tenancy for owner's use of the property. Section 44 of the Act states the circumstances in which a tenancy may end and section 44 (1) (b) and section 49(2) both state that a fixed term tenancy agreement may end not earlier than the end date specified on the agreement. In this case, the agreement states the term ends on December 31, 2017 so a landlord may not end the tenancy for owner's use until that date. Therefore, I set aside the Notice to End Tenancy dated August 7, 2014. The tenancy is reinstated and continues.

Regarding the Notice to End Tenancy for unpaid rent, I find the Notice was posted on the door on August 27 so deemed received on August 30, 2014; I find the tenant paid the rent by registered mail within the 5 days allowed in the Act. Therefore, I set aside the Notice to End Tenancy for unpaid rent. The tenancy is reinstated and continues.

On the tenant's application, the onus is on them to prove their claim on the balance of probabilities. I find the tenants were very concerned for their safety after some unknown individuals called on them on or about August 8, 2014 and they called the RCMP. I find they had an interior door as a front door and it and the locks were insecure. I find they notified the landlord in writing in two letters. The fact that the landlord states they did not receive the letters, I find is not the fault of the tenant as they were sent by registered mail and the landlords went on vacation without leaving any emergency contact number as required by section 33(2) of the Act. I find the tenants fulfilled the conditions set out in section 33 and were entitled to deduct the cost of the emergency repair from their rent pursuant to section 33(7) of the Act. I find they have therefore been reimbursed for this repair by their deduction from September rent.

In respect to the other requested repairs, I find that section 32 of the Act requires the landlord to maintain residential property in a state of repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant. I find the weight of the evidence is that this property has not been maintained as required. Unfortunately, the landlord is a new owner but this requirement still applies to them as owners. I am ordering the landlord to complete the necessary repairs within a reasonable time as provided in the Act.

Conclusion:

The Notices to End Tenancy dated August 7, 2014 and August 27, 2014 are hereby set aside and cancelled. The tenancy continues. I dismiss the landlord's application for an Order of Possession and find they are not entitled to recover the filing fee.

I find the tenant has paid all rent for September 2014 as they were entitled to deduct the amount for the emergency repair made for security. I find the tenant entitled to recover the filing fee of \$50 by deducting it from their rent for November 2014. The following schedule of inspection and repairs is based on this being a new purchaser and a reasonable time to effect repairs before granting the rent rebate.

I HEREBY ORDER THE LANDLORD TO DO REPAIRS AS FOLLOWS:

1. Electrical inspection must be done by a qualified electrician and necessary repairs made to the electrical system by November 15, 2014.
2. Plumbing inspection must be done by a qualified plumber and necessary repairs to the upstairs bathroom, and leaks in the kitchen must be completed by November 15, 2014.
3. The drainage around the house and gutters must be assessed by qualified tradespersons and repairs to it, if necessary to avoid more flooding must be completed by December 15, 2014.
4. The landlord must get an inspection for any mould damage after the plumbing and drainage has been addressed and have remediation done, if necessary, by March 15, 2014.
5. The railings on the deck must be replaced with a safe material other than tin roofing by February 15, 2014.
6. The landlord must provide proof of all inspections and repairs to the tenant and to the Residential Tenancy Branch in the event of another hearing on this matter.

SHOULD THE LANDLORD NOT COMPLY WITH THE ABOVE ORDER, I HEREBY ORDER THAT THE TENANT MAY DEDUCT \$200 A MONTH AS A RENT REBATE FOR EVERY MONTH AFTER THE DATE SPECIFIED ABOVE THAT THE DESIGNATED INSPECTION AND REPAIR IS NOT DONE.

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: October 07, 2014

Residential Tenancy Branch

