



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, MNR, MNSD, MNDC, OLC, ERP, RP, LRE, RR, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim.

The tenant applied for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order directing the landlord to comply with the *Act*, carry out repairs and reduce rent. The tenant applied for an order restricting the landlord's entry into the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, it was determined that the tenant had not applied to dispute the notice to end tenancy. In addition the tenant still owed rent and therefore the notice to end tenancy is upheld and the landlord will be granted an order of possession. The landlord will also deal with the return of the security deposit in accordance with section 38 of the *Residential Tenancy Act*.

Since the tenancy is ending, most portions of the tenant's application are moot except for the tenant's monetary claim for compensation. Accordingly this hearing only dealt with the landlord's application for a monetary order for unpaid rent and for the filing and the tenant's application for compensation and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Is the tenant entitled to a monetary order for compensation and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on April 15, 2015. The tenant (JN) and his roommate (NK) agreed to pay rent in the amount of \$595.00 each, on the first of each month. A tenancy agreement was filed into evidence which shows that laundry is included in the rent. Prior to moving in the tenants paid a security deposit of \$300.00 each for a total of \$600.00. The rental unit consists of a suite in the basement of the landlord's home.

The landlord testified that NK paid his share of rent for August but failed to do so for September and October. The tenant JN agreed that he owed his share for August, September and October.

During the hearing, it was determined that NK had paid his share for September. The tenant JN also pointed out that the landlord allowed another person to live in the suite and charged this person \$400.00. The tenant filed evidence to support his testimony by way of a note written by the landlord demanding \$400.00 from the extra tenant.

JN stated that this extra tenant moved in on June 15, 2014 and since then JN was forced to share the common areas with one extra person. JN is claiming rent reductions for May, June and July due to the extra tenant. The landlord denied having received any extra rent from the third tenant but agreed that she had written the undated note demanding \$400.00 from the additional tenant.

JN also stated that the landlord allowed him the use of laundry at the start of tenancy and then refused to allow him to use the facility because he paid rent by cheque and she preferred rent by cash. The landlord denied the allegation and stated that she allowed the tenant to use the facility. However, the tenant filed into evidence, a copy of an email from the landlord dated July 07, 2014 that stated that laundry was not included in the rent.

JN further testified that the landlord would disturb his peace and quiet by banging on his door in the morning while he was asleep, peeping through the windows, sending him threatening emails, writing notes to him and talking rudely to him even on the street. The tenant is claiming \$300.00 for the loss of quiet enjoyment.

The tenant also stated that the stove was faulty and that there was no smoke detector in the unit. The landlord was notified. During the hearing, the landlord pointed out that she had her husband and later a technician fix the stove and filed a receipt to support her testimony.

The tenant also stated that shortly after he served the landlord with this notice of hearing, she installed a smoke detector. The tenant is claiming \$500.00 for the loss of these items for March to July 2014.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

In this case the tenant agreed he did not dispute the notice and also did not pay rent. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim for unpaid rent. However I am unable to determine the amount of rent owed to the landlord because she allowed another person to live in the rental unit. Evidence confirms that she expected the third person to pay \$400.00 per month and expected the tenants NK and JN to share the common areas with this additional tenant. In addition at the start of the hearing, the landlord misrepresented the amount of rent owed to her. Since I am unable to determine the amount owed by the tenant, I dismiss the landlord's claim with leave to reapply.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

I have reviewed the submissions of both parties and I find that the last two months were very stressful on both the tenant and landlord for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant was not able to provide any independent evidence to support his complaint. His case is entirely dependent on his version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other. Therefore the tenant's claim for \$300.00 for the loss of quiet enjoyment is dismissed.

Based on the testimony of both parties and the evidence filed by the tenant, I find that the landlord restricted the tenant from using the laundry even though it was included in the rent. Therefore I find that the tenant is entitled to recover the additional costs he incurred for laundry. The tenant stated that he paid approximately \$14.00 per week for laundering his clothes and sheets. The tenant agreed that he was permitted to use the laundry for two weeks at the start of tenancy. Therefore I award the tenant \$14.00 per week for 22 weeks for a total of 308.00.

The landlord stated that NK used the laundry and therefore I am unable to determine the number of weeks that NK was not allowed use of the facility. For this reason I dismiss the portion of this application that pertains to NK's entitlement with leave to reapply.

Both parties have proven only a portion of their claim and therefore must bear the cost of filing their own applications.

Overall the tenant has proven a claim of \$308.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the tenant a monetary order in the amount of **\$308.00**.

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 01, 2014

Residential Tenancy Branch

