



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, ERP, RP, RR, DRI, MNSD, MNDC, OLC, PSF, 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, utilities and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to carry out emergency repairs, comply with the *Act*, provide services and reduce rent. The tenant also applied to dispute a rent increase and for compensation for loss and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. Both parties provided extensive documentary evidence. Both parties' testimonies and evidence have been considered in the making of this decision. As this matter was conducted over 105 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent and the filing fee? Is the tenant entitled to the remedies that she has applied for?

Background and Evidence

The tenancy started on May 01, 2014 for a fixed term of six months at a monthly rent of \$3,000.00 due on the first of each month. The tenant paid a security deposit of \$1,500.00.

At the end of the fixed term, the tenancy continued for another fixed term of six months at a monthly rent of \$4,000.00. The tenant paid an additional \$500.00 towards the security deposit.

The tenant stated that right from the start of tenancy there was mould present in the rental unit and she informed the landlord about the problem. The landlord indicated that cleaning with bleach and water would take care of the problem. The tenant stated that she attempted to clean with bleach and water but the mould kept returning.

The landlord obtained a quote from a professional cleaner. The cleaning quote ranged from \$525.00 to \$700.00 depending on the number of hours it took. The landlord authorized 8 hours and paid the cleaner \$286.00 for a job done on August 13, 2014.

The tenant stated that the job was not done properly and she fell sick due to the presence of mould inside the rental unit. The tenant stated that she was forced to skip work and suffered lost wages as a result. The tenant stated that she decided to carry out the required repairs and cleaning herself and withheld \$2,000.00 from rent for September 2014, as compensation for her time and costs incurred to repair and clean the rental unit.

The landlord testified that the tenant was late on rent every month and provided proof of rent received by way of email transfers from the tenant. The landlord stated that the tenant paid rent in installments and in August 2014, the tenant paid rent in the amount of \$1,000.00 on August 01, 2014 and \$1,000.00 on August 05, 2014. The next time the tenant paid rent was on September 05, 2014 in the amount of \$1,000.00.

The tenant stated that she paid an additional installment on August 02, 2014 in the amount of \$1,000.00 and therefore did not owe rent for August. The tenant filed evidence to show that rent for August, was fully paid and agreed that she withheld rent in the amount of \$2,000.00 for September.

On September 19, 2014, the landlord served the tenant with a notice to end tenancy for non payment of rent. The amount owed as per the notice was \$2,000.00 + \$1,000.00. The landlord explained that the tenant owed \$1,000.00 for August and \$2,000.00 for September 2014 for a total of \$3,000.00 in unpaid rent.

The landlord also applied to be reimbursed for the cost of hydro in the amount of \$107.00 for the period of May 01 to May 03, 2014 and for the cost of internet for the months of May, June and July, in the amount of \$165.00.

The landlord did not file any documentary evidence to support her claim for utilities. The tenant stated that she paid utilities to the co tenant and denied owing the landlord any money for utilities.

On September 28, 2014 the tenant filed this application primarily to dispute the notice to end tenancy and also to recover the costs she incurred to clean and repair the rental unit. The tenant stated that she carried out this work from August 12 to September 07, 2014 and is claiming \$3,500.00 for the cost of lost wages, materials and labor.

The landlord stated that she did not agree to compensate the tenant for work done. The tenant withheld \$2000.00 from rent for September as compensation.

Analysis

Landlord's application

The tenant received the notice to end tenancy for unpaid rent, on September 19, 2014 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. 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.

In the absence of evidence to support her claim, I dismiss the landlord's claim for \$272.00 for utilities. I also find that the tenant does not owe rent for August as she has proven that full rent for August was paid in 3 installments of \$1,000.00 each on August 01, 02 and 05, 2014. I find that the landlord is entitled to \$2,000.00 for unpaid rent for September. Since the landlord has proven a portion of her claim I award her \$50.00 towards the recovery of the filing fee for a total of \$2,050.00.

Tenant's application

Since the tenancy is coming to an end the tenant's application for an order directing the landlord to carry out emergency repairs, comply with the *Act*, provide services and reduce rent is moot.

I now have to determine whether the tenant is entitled to compensation of \$3,500.00 for lost wages and for the work done by her to paint, caulk and clean the rental unit.

Based on the testimony of both parties, I find that it is more likely than not that the unit required cleaning and that mould was present in the unit. The landlord hired a cleaner to take care of the problem.

The tenant found that the job done by the cleaner was inadequate and filed photographs to show the condition of the unit before and after the tenant cleaned and painted. However, the tenant was not able to prove that the landlord agreed to compensate her for materials and labor and since the landlord had already paid a professional cleaner to carry out the cleaning work, I find that the landlord acted in a responsible manner.

The landlord testified that she did not authorize the tenant to carry out repairs and did not agree to pay for work done by the tenant. The tenant had the option of applying for an order directing the landlord to carry out repairs but did not avail herself of this option and chose to carry out the repairs herself, without the consent or approval of the landlord. Therefore the tenant's claim for compensation is dismissed. The tenant has not proven her claim and must therefore bear the cost of filing her own application.

Overall the landlord has established a claim of \$2,050.00. . I order that the landlord retain the security deposit of \$2,000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$50.00. 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 landlord a monetary order in the amount of **\$50.00**

The tenant's application is dismissed 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: November 13, 2014

Residential Tenancy Branch

