



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, PSF, RR, OPR, MNR, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy, an order for the landlord to provide services or facilities and an order permitting the tenant to reduce his rent and a cross-application by the landlord for an order of possession, a monetary order and recovery of the \$50.00 filing fee paid to bring the landlord's application. Both parties participated in the conference call hearing.

At the hearing, the parties agreed that the tenancy would end on December 31, 2014. As the issue of possession of the unit was resolved by settlement and the other claims by the tenant are rendered moot as the tenancy will be ending, the only issue remaining to be adjudicated is the landlord's monetary claim.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that in November 2014, the tenant withheld \$255.50 from his rent for emergency repairs. He testified that there was a slow leak in the plumbing and some backwater rising which was causing other problems. The tenant testified that he repaired these issues over the course of several months during the summer and that he asked the landlord on 2 occasions to perform repairs, but the landlord did not respond to him. The tenant testified that in June and October 2013, he wrote notes on the envelopes which held his rent asking for repairs. He submitted copies of those notes, which read: "Fridge? Plumbing??" in June 2013 and "Still fridge problems and plumbing" in October 2013.

The landlord testified that at no time did the tenant request repairs. The tenant's son testified that the landlord suffers from a serious hearing impairment and if the tenant verbally requested repairs as he indicated, it may be that the landlord did not hear the tenant speaking. The landlord denied having received the notes on the rent envelopes.

The landlord seeks a monetary order for \$255.50 which is the amount withheld by the tenant.

Analysis

The tenant bears the burden of proving not only that repairs were required, but that he advised the landlord that repairs were required and gave the landlord an opportunity to perform those repairs himself before embarking on the work. I am not satisfied that the tenant advised the landlord that repairs were required. I find that the notes on the rent envelopes were not sufficiently detailed so as to give the landlord the information he would need or to put the landlord on notice that repairs were required. The landlord has denied having conversations with the tenant about repairs and in the absence of witness evidence to corroborate the tenant's testimony, I am not satisfied that those conversations took place.

For this reason, I find that the tenant did not have the right to deduct the cost of repairs from his rent and I order the tenant to pay the landlord \$255.50. I further find that the landlord is entitled to recover the filing fee paid to bring this application and I order the tenant to pay the landlord \$50.00 for a total of \$305.50. I grant the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The landlord may also recover part of the monies by withholding the security deposit at the end of the tenancy.

In support of the parties agreement that the tenancy will end on December 31, 2014, I grant the landlord an order of possession. This order must be served on the tenant. Should the tenant fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$305.50. I consider the tenant's claim to have been withdrawn as the parties agreed to end the tenancy, rendering the remaining issues moot.

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: December 09, 2014

Residential Tenancy Branch

