



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant's Application: CNC, ERP, FF, LRE, MNR, OLC, RP, RPP, RR

Landlord's Application OPR, MNR

Introduction

This hearing dealt with cross applications.

In the Tenant's Application for Dispute Resolution he sought an Order cancelling the Notice to End Tenancy issued for Cause on August 13, 2014; an Order that the Landlord comply with the Act, make emergency and other repairs, and return the Tenant's personal property; an order suspending or setting conditions on the Landlord's right to enter the rental unit; an Order allowing the Tenant to reduce rent for repairs; and, a Monetary Order to recover the filing fee for the Application.

In the Landlord's Application for Dispute Resolution she sought an Order of Possession based on unpaid rent; a Monetary Order for unpaid rent; an order to retain the security deposit in partial satisfaction of the claim; and, to recover the filing fee for the Application.

Both parties appeared at the hearing. The Landlord was assisted by her property manager, F.M. The Tenant was assisted by T.F., who during the October 7, 2014 hearing identified herself as counsel for the Tenant and during the November 20, 2014 hearing identified herself as his counselor.

The hearing process was explained and the participants were asked if they had any questions. All parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to the following Orders:
 - a. an Order cancelling the Notice to End Tenancy issued for cause;
 - b. Orders that the Landlord:
 - i. comply with the Act,
 - ii. make emergency and other repairs, and
 - iii. return the Tenant`s personal property;
 - c. an order suspending or setting conditions on the Landlord`s right to enter the rental unit;
 - d. an Order allowing the Tenant to reduce rent for repairs; and,
 - e. a Monetary Order to recover the filing fee for the Application.
2. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement.

The tenancy began July 1, 2014. Monthly rent was payable in the amount of \$1,200.00 payable on the 1st of the month. A security deposit in the amount of \$600.00 was required, and noted as payable on July 30, 2014 in the amount of \$300.00 and on August 30, 2014 in the amount of \$300.00.

The residential tenancy agreement included an addendum. Relevant to the applications before me are the following paragraphs:

4. Any work requiring payment to either professional trades person or tenant themselves to be cleared in writing by the Landlords or Landlord's Agent prior to work being commenced. Emergency repairs the exception, but an attempt to contact Landlords or Landlord's Agent on discovery must be made.
5. No work or repairs will be paid out without full Invoice and all pertinent receipts.

Also submitted in evidence was communication from the Landlord (noted as document #5) wherein the Landlord wrote:

"I would like to get estimates for each of these tasks in terms of both labor and material costs. Once I have all the estimates, I can prioritize each one and set up a monthly finance stream that keeps the repairs moving and consistent."

F.M. testified that document #5, as well as F.M. testified that the Tenant had previously been hired to renovate the rental unit. He invoiced and was paid a total of \$7,579.62 from April 2014 to June 2014 (the invoices and cancelled cheques were introduced in evidence). Once the tenancy began, the Tenant invoiced the Landlord \$350.00 for work done in July 2014 which was approved by the Landlord and credited towards his August 2014 rent leaving a balance owing of \$850.00 for August 2014.

The Tenant failed to pay the balance owing for rent for the month of August 2014. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on August 13, 2014 indicating the amount of \$850.00 was due as of August 1, 2014 (the "10 Day Notice").

Filed in evidence was a Proof of Service Notice to End Tenancy which indicates the 10 Day Notice was served on the Tenant by hand, and by affixing to the rental unit door on August 13, 2014 at 1:00 p.m. Accordingly, I find that the Tenant was served with the 10 Day Notice as of August 13, 2014.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, August 18, 2014. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant did not pay the rent after receiving the 10 Day Notice.

F.F. further testified that the only rent paid by the Tenant was the \$800.00 he paid for July 1, 2014 as he had been credited \$400.00 for cleaning the rental unit.

F.M. testified that the Tenant also failed to pay the security deposit as agreed upon. The Tenant also did not pay the \$1,200.00 monthly rent for September, October and November, such that the Landlord sought a Monetary Order in the amount of \$5,050.00 in addition to recovery of the filing fee of \$50.00 for a total of \$5,100.00.

F.M. stated that the \$350.00 credit to the Tenant for work performed in July of 2014 related to a leaky faucet (which was repaired by the Tenant and for which the Tenant was provided a \$100.00 credit) and the replacement of a countertop (which was also replaced by the Tenant and for which he was provided a \$250.00 credit).

Further, F.M. testified that after payment of the April-June 2014 invoices, she advised the Tenant that the homeowner, D.G. and her husband, required time to regroup their finances and prioritize any remaining renovations; further F.M. testified that she informed the Tenant that the owner may use the Tenant's services, or hire others to complete any work and that in any case all work needed to be approved prior to commencement.

The owner, D.G., also testified to the \$350.00 credit for the work performed in July of 2014 and confirmed that work was approved by her. She also testified that she spoke to the Tenant in July and advised him that she needed to speak to her husband about any further work. She stated that she did not approve any further work, nor did the Tenant request approval of any further work, but that in August he called her and stated that he was preparing an invoice for her for work he had performed that month. She testified that she did not agree to any such work, nor was any invoice ever provided.

The Tenant did not pay the outstanding rent and denied that he owed the Landlord \$5,050.00. The Tenant alleged that he was not required to pay rent because of the value of his work towards renovating the rental unit.

He testified that instead the Landlord owed him \$5,567.00 for work he performed including the following invoices, which he says are outstanding:

- Invoice #72863 in the amount of \$912.51;
- Invoices #26, 27 and 28 totalling \$298.13;
- Invoice #29 for \$178.48; and,
- An invoice in the amount of \$1,297.52 for emergency repairs done in late July 2014 wherein he billed out part of his time at \$150.00 per hour.

Notably, invoice 0072863, dated July 23, 2014, in the amount of \$912.51 includes the work approved by the Landlord for the bathroom counter install in the amount of \$250.00 and the \$100.00 for the emergency repair of the upper bathroom. F.M. testified and provided a letter in evidence that only \$350.00 of the \$912.51 was approved by the Landlord.

The Tenant submitted a copy of invoice #0072868 wherein he writes that the amount of \$909.55 is outstanding for taxes for invoices up to and including June 30, 2014; notably, the invoices submitted in evidence did not include any amounts for tax.

The Tenant submitted in evidence copies of his Visa statements from May 22, 2014 to July 15, 2014. No accompanying receipts were provided and the Landlord argued that it was not possible to determine if the charges related to the work on the rental unit, or other projects in which the Tenant was involved.

The Tenant testified that F.M. told him to stop work on July 23, 2014 and that he did not perform any work past that point.

As to the balance of the relief sought by the Tenant in his Application he stated the following.

The Tenant sought a Monetary Order in the amount of \$4,400.00 pursuant to section 33(5) and confirmed that amount is "approximate" and is based on what he believes his time is worth. I find that the Tenant was credited the \$100.00 for the repairs in July 2014 and make no finding as to whether they were emergency or otherwise. In any case, the Tenant failed to provide any evidence which would support the figure of \$4,400.00, or satisfy the requirements of section 33(5)(b); as such, I dismiss the Tenant's application for a Monetary Order.

The Tenant's Application for Dispute Resolution indicated that he sought an Order pursuant to section 62(3) that the Landlord comply with "9.1, 9.2, 9.3, and 9.4 of the R.T.A." He refused to provide any further information as to this request. As he failed to provide any further details or evidence to support this request, I dismiss his request for an order pursuant to section 62(3).

The Tenant also sought Orders with respect to sections 32 and 33 of the Act. When asked what repairs, emergency or otherwise he wanted the Landlord to make, the Tenant responded that he had "no idea". As the Tenant failed to provide evidence to

support this claim, I dismiss the Tenant's application for an Order pursuant to sections 32 and 33.

When asked what property he wished to be returned by the Landlord, the Tenant responded stated that "she should go through, and whatever is mine give it back". He refused to provide any further details, only to allege he and the Landlord had previously been in a relationship. As the Tenant provided insufficient evidence to consider this claim, I dismiss the Tenant's application for an Order pursuant to section 65(1).

The Tenant also made an oral request for \$150.00 as he stated he had filed his application three times. As I have dismissed the Tenant's application in its entirety, his request to recover the filing fee is similarly dismissed.

At the conclusion of the hearing on November 20, 2014, the Tenant threatened the Landlord and the Landlord's agent by saying that if any of them entered his rental unit they would be "arrested" or "get a 2x4 across the head". When the Landlord was cautioned to inform the authorities of this threat, the Tenant swore at me and hung up the phone.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The residential tenancy agreement provides that the Tenant was to pay \$1,200.00 per month in rent. While he was provided some credit towards his August 2014 rent, he has not paid the outstanding balance for August, or for September, October and November. Accordingly, he is in breach of the act and the tenancy agreement. Any issue the Tenant has with respect to payment or non-payment as the case may be for his services, is to be dealt with in another forum.

Under section 26 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

I find that the Landlord is entitled to an Order of Possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of \$5,100.00 comprised of the following:

\$850.00 for the balance of rent owing for August 2014;
\$1,200.00 for September 2014;
\$1,200.00 for October 2014;
\$1,200.00 for November 2014;
\$1,200.00 for December 2014;

and the \$50.00 fee paid by the Landlord for this application.

Accordingly I grant the Landlord an order under section 67 for \$5,100.00.

This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The Tenant failed to pay rent and his application to dispute the 10 Day Notice is dismissed.

The Landlord is granted an Order of Possession and is granted a Monetary Order in the amount of \$5,100.00

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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*.

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 01, 2014

Residential Tenancy Branch

