



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR MNR CNR OPT OPR RP ERP RR PSF

Introduction

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

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) For a monetary order as reimbursement for repairs and for lost time at work due to the landlord's harassment causing emotional distress;
- e) To obtain an Order of Possession for the tenant pursuant to section 54; and
- f) To recover the filing fee for this application.

This hearing also dealt with an application by the landlord pursuant to the Act for orders as follows:

- g) To obtain an Order of Possession to regain occupancy of the unit as there never was a tenancy created;
- h) To obtain a Monetary Order as compensation for occupancy of the unit pursuant to section 67;
- i) To recover filing fees for this application

Service:

The Notice to End Tenancy is dated December 18, 2014 to be effective December 31, 2014. The tenant filed her Application for Dispute Resolution on December 8, 2014. Both parties confirmed they had received the Applications. I find the documents were legally served for the purposes of this hearing.

Preliminary Issue:

Is there a landlord –tenant relationship between the parties?

Issue(s) to be Decided:

If there is a tenancy agreement, has the landlord proved on the balance of probabilities that there is unpaid rent so cause to end the tenancy? In the alternative, if there is no tenancy, is the landlord entitled to a monetary order for the cost of the use and occupancy of the unit? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession?

Has the tenant (or occupant) proved on the balance of probabilities that she is entitled to an Order of Possession for the unit pursuant to section 54 and to an order that the landlord do certain repairs and compensate her for repairs not done? Has she proved that the landlord through act or neglect has caused her suffering and if so, is she entitled to compensation and in what amount?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. A significant amount of emails between the parties were provided as evidence of the history. In October 2014, the unit was listed for rent on the internet for \$2,000 a month plus utilities. The owner lives out of town so there was communication about a possible time for viewing and the owner said they 'thinking of renting for November 15, 2014, as [they] would like to do a few paint touch ups first'.. The occupant viewed the unit on November 2, 2014 with the male owner and emailed the female owner to say she had 'a lovely walk through and would like to connect with you tomorrow morning to confirm the offer to rent... I can secure the spot with a damage deposit until the move in date, if we all agree to collaborate as landlord and tenant'. An email on Nov. 4, 2014 states she sent the damage deposit and "am sending the tenancy agreement". The tenant said she printed a form from the Residential Tenancy Branch website signed it and sent it. The landlord said they never got any signed agreement then or at any time since. There is no copy of the alleged agreement in evidence.

On November 26, 2014, an alarm company emailed the owner for the new tenant to take over the alarm "if they decide to go ahead". On November 29, 2014, the parties met and the landlord found out that the occupant had made approximately \$2,500 in commitments to have the unit painted professionally without their knowledge or obtaining any authority or consent from them. The owner said their original verbal agreement had been to give the occupant \$400 discount on her first month's rent to clean and paint the unit and to pay for painting supplies with receipts and they had only heard from her once in November to say she and her friends were painting. They had no knowledge that there were other issues and came to have an agreement signed only to learn that 'things had changed'. They said they did not want to be landlords now as

this experience was so stressful. The offered the option of a six month lease with vacant possession at the end and offered to pay the painter directly. They asked for a written list of anything else that needed to be done so they could hire their own contractor and offered to pay for the alarm themselves. In this email, they emphasized that 'we need to agree and sign before you get official possession of the unit'.

On December 1, 2014 in a follow up email, the owners said they needed to have 3 references from her and have the signed contract by noon on December 2, 2014 and to please include the receipts for the paint. They did not intend to upgrade the windows as they had already lost \$5,300 by not renting in November. On December 2, 2014, the landlord apologized for having a locksmith there and said he misunderstood the Act. He made another proposal and said he did not know if it was possible to reconcile their differences; he noted on December 3, 2014, the paint receipts submitted totalled \$1917.98 which was not the \$800 they agreed on for painting supplies.

The landlord submits there was no tenancy agreement between the parties as there was no meeting of the minds. Nevertheless the occupant lived in a unit which rents for \$2,000 a month for December and she is still there in January. In the hearing, the tenant indicated she intends to stay and appeal any decision contrary to her. The landlord claims compensation for her use and occupancy as follows:

1. \$255.05 balance of money owed for December. The tenant agreed she paid only \$544.95 for December but the landlord allowed \$400 deduction for cleanup and touch-up and \$800 for paint supplies.
2. \$2000 for use and occupancy in January 2015 plus utilities. The tenant contended that the home was not worth \$2,000 month in rent as there were necessary repairs.

The landlord said the first knowledge they had of the tenant demanding repairs was when she served the Application for Dispute Resolution in response to the Notice to End Tenancy for non payment of the balance of the occupation rent for December. They said they would agree to her occupying the unit until the end of January if the tenant paid the amounts owing for occupancy; the tenant was not willing to pay these amounts. They tried to arrange a date for fire alarm upgrading in the hearing but the tenant refused to give a date and said she would email them. The landlord advised her that they may have to give 24 hours notice and do the upgrading to comply with insurance and fire requirements.

The tenant maintained there had been an ongoing negotiation; she was offered the unit for a 6 month fixed term, then from month to month, at a rent of \$2,000 a month less \$400 and the cost of paint in November. She said had signed a tenancy agreement she printed from the tenancy branch website, scanned and emailed it to the landlord but has no copy. Then she said they wanted her to sign an agreement they showed her on November 29, 2014 but no repairs were done, rent was \$2,000 and she had to have insurance. The proposals kept changing with reducing different fixed terms. The landlord said the November 29, 2014 agreement was a standard agreement with the tenant required to have insurance which is normal and she refused to sign it. They said they were shocked that the tenant had painted the whole unit white without any permission or authority. They pointed to photographs in evidence to illustrate that the unit was in good condition when offered for rent.

She said there was a barrage of emails and she felt intimidated as a single mother. She request \$25,000 in compensation for harassment from the landlord from November 29, 2014 to the present. She said he had a locksmith there to change locks on December 2, 2014 and on December 18, 2014, another person there to take pictures. She said on New Year's Day, the landlord was in the basement storage area. She said evidence of harassment and her feeling of loss of safety and peaceful enjoyment is that she called the Police and based on what she told them, they told her to call them if the landlord gave her problems. The landlord said he called the Police to find out what the problem was.

The landlord said there was no intimidation, threats or discrimination. He exercised his legal rights by refusing occupancy and emphasizing this by email December 1, 2014 and again December 2, 2014 until a tenancy agreement would be signed; when she moved in anyway without an agreement, he was meeting a locksmith to change locks but called the tenancy branch and they advised him to exercise caution so he did not have the locks changed. In respect to the December 18, 2014 incident, the landlord said she was given Notice of Entry to inspect for damages by email as she had served them with her Application dated December 8, 2014 listing damages/repairs for the first time. She refused them entry to inspect and their agent was taking some photographs. On January 1, 2014, the landlord entered the basement to remove some of his items; that separate unit is not rented to her and he has a legal right to enter his own property. The landlord submits this was not intimidation.

The landlord submits that the tenant has provided no evidence to support her claim for loss of income, infringement of her rights or harassment by the landlord.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

According to the Act section 1, a tenancy means a tenant's right to possession of a rental unit under a tenancy agreement. The agreement may be written or oral between a tenant and landlord respecting possession of a rental unit. I find the weight of the evidence is that there was no landlord –tenant relationship between these parties, either written or oral. Contract Law provides that to have a contract there must be an offer and acceptance. I find in this case, there were a series of offers but no acceptance as illustrated by the emails in evidence. I find there was no meeting of the minds. Although the tenant forwarded a security deposit to the landlord for \$1,000, it appears she acted prematurely for she had never agreed to the terms of the tenancy as illustrated by her refusal to sign a tenancy agreement.

The tenant states she scanned and sent a copy of a form agreement to the landlord which he said he never received. I prefer the evidence of the landlord as I find it more credible as she was unable to provide a copy of this, although if it was scanned, she must have had an original. The landlord's credibility is also supported by the evidence showing she refused to sign the tenancy agreement produced by the landlord on November 29, 2014 as she did not like some of the terms in the addendum such as the provision of insurance and also that repairs were not done; I find this agreement had the original 6 month fixed term as offered in October and there is no evidence that repairs were discussed in the earlier negotiations. In effect, I find the tenant wanted another negotiated agreement. I find the landlord subsequently offered her some shorter term agreements which she still did not sign. In short, I find the weight of the evidence is that there were a series of negotiations but no meeting of the minds and no acceptance of the landlord's offers. Even in the hearing, the tenant was objecting to the \$2,000 rent per month, although this was the advertisement to which she responded. I find the landlord entitled to repossess the unit from the occupant who has not paid in full for her occupation of the premises.

Since she has occupied a unit that was advertised to rent for \$2,000 a month, I find the landlord entitled to compensation for her use and occupancy. I find the landlord entitled to a monetary order for \$2255.05 for use and occupancy and \$246.75 for utilities to December 31, 2014. I decline to apportion utility costs for January 2015 based on projections and give the landlord leave to reapply to recover these costs within the legislated time limits.

In respect to the tenant's claim for \$25,000 for loss of income, emotional distress, attempted illegal repossession of the unit and harassment, the onus of proof is on her to prove on a balance of probabilities that the landlord caused her losses through his act or neglect and to provide proof of such losses. I find insufficient evidence to support the tenant's allegations. I find the instances cited by her of harassment were the episode of the landlord attempting to have an agent take some photographs of the property in December after she refused entry when he served legal notice under section 29; there is no evidence that this agent entered her home. Again, on January 1, 2015, I find the landlord was entering a unit not rented to the tenant to retrieve some items; I find this is his legal right and is not harassment.

The landlord explained that on December 2, 2014, he wanted to change the locks as he had warned her not to move in as no agreement had been signed and no tenancy created; however, when he arrived and found her in residence, he dismissed the locksmith. I find the weight of the evidence is that he did not try to possess the unit illegally when he found the tenant had already moved in despite the warnings to her not to move in; I find these warnings did not contain any threats but were politely worded to ask that no possession take place until an agreement was signed. I do not construe this as harassment or intimidation; I find the landlord was exercising his legal rights to demand an agreement to rent his property before she took possession. The tenant said that the fact she had called the Police twice should be good evidence of intimidation; however, I find this may be evidence of her feeling intimidated and of the facts she provided to the Police but it is not evidence that the landlord was behaving in an intimidating way. I find that all of the landlord's email communications with the tenant were courteous and indicated an accommodating attitude as he agreed to deduct money from rent for December for painting etc. and presented her with numerous proposals in an effort to get a tenancy agreement with her which she declined.

I find the tenant may have suffered loss of income and these negotiations may have caused her emotional distress, but I find insufficient evidence to support that she suffered any loss of income or emotional distress and that such losses were due to the landlord's actions.

I find the issues of repairs to the property to be moot as an Order of Possession is issued so I decline to consider repair requests. In any event, when the landlord tried to arrange for some emergency repairs to the fire alarm, the tenant showed reluctance to try to arrange any dates for this. I dismiss the Application of the tenant.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. I find her not entitled to recover her filing fee as she was not successful in supporting her claims.

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order for use and occupation as calculated below. I find him entitled to retain the security deposit to offset the amount owing and to recover filing fees for this application.

Balance of amount for use and occupation December	255.05
Utility cost to December 31, 2014	246.75
Occupation and use January 2015	2000.00
Filing fee	50.00
Less security deposit (no interest 2014)	-1000.00
Total Monetary Order to landlord	1551.80

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: January 08, 2015

Residential Tenancy Branch

