



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF, MT, CNR

Introduction

This hearing dealt with two related hearings. One was the landlord's application for an order of possession and a monetary order. The other was the tenant's application for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent; allowing him more time to make that application; and compelling the landlord to make repairs to the rental unit. Both parties appeared and had an opportunity to be heard.

The landlord and the tenant agreed that the tenancy would end at 1:00 pm, January 22, 2015, and that an order of possession effective that date and time would be granted to the landlord.

This agreement made the applications for an order of possession, setting aside the notice to end tenancy and ordering repairs irrelevant. The hearing proceeded on the monetary issues only.

The landlord had served his evidence package on the tenant by sending it by registered mail to rental unit. The records of Canada Post show that the mail was received and was signed for on December 29. The tenant said he had not seen the evidence but he did know the person who had signed the post office receipt. As the evidence was served in compliance with the Rules of Procedure I accepted the landlord's evidence.

The tenant confirmed that he had not filed any written evidence other than a copy of the 10 Day Notice to End Tenancy.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

There was a written tenancy agreement signed. The tenancy agreement says this tenancy commenced November 15, 2014 but the tenant actually moved into the rental

unit a few days earlier. The agreement specifies that this is a fixed term tenancy expiring on November 1, 2015; that the monthly rent is \$600.00; and that the rent is due on the first day of the month. The agreement also specifies that there are no additional terms.

A move-in inspection was not conducted and a move-in condition inspection report was not completed.

The tenant paid \$300.00 at the start of the tenancy. The landlord stated that this was payment of a half month's rent for November and that nothing was paid for a security deposit. The tenant said the payment was for the security deposit and that nothing was paid for rent. Both parties testified that this \$300.00 is the only payment the tenant has made since the start of this tenancy.

The tenant says the agreement was the rent would only be paid if the landlord made certain repairs agreed upon in advance. He testified that this agreement was set out in text messages between he and the landlord.

The landlord says there was no such agreement and that if the tenant had complained about deficiencies in writing he would have responded to them. The landlord did file copies of some text messages from the tenant, all of which explained why he had not yet made payment and promising payment in the future.

The landlord issued and posted to the door of the rental unit a 10 Day Notice to End Tenancy for Non-Payment of Rent. It was dated December 2, 2014. The landlord testified that the notice was posted on December 2.

The tenant testified that the notice was posted on the last day of November. His application for dispute resolution says he received it on December 1.

The landlord did file photographs of the notice posted to the door but there is no date stamp on the photographs.

The 10 Day Notice to End Tenancy contains the following information under the heading "Important Facts": "The tenant is not entitled to withhold rent unless ordered by an arbitrator.", and "An error in this notice or an incorrect move-out date does not necessarily make the notice invalid."

In his oral testimony the tenant complained that the stove did not work, the faucets and the toilet leaked, and there was a faulty electrical service to the bathroom. He also said they had found evidence of bugs and rodents.

Analysis

Section 26(1) of the *Residential Tenancy Act* provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulation or the tenancy agreement, unless the tenant has an order from the Residential Tenancy Branch allowing the tenant to withhold payment of all or any portion of the rent. Accordingly, the tenant had no legal right to withhold the rent.

If a landlord refuses to make required repairs a tenant's remedy is to apply for a repair order and an order allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. In this case the tenant has only applied for a repair order. He has never applied for or obtained an order permitting him to withhold the rent.

On any application for dispute resolution the applicant must prove their claim on a balance of probabilities. The only evidence as to whether there was an agreement between the landlord and the tenant about repairs is the contradictory oral testimony of the parties. The tenant has produced no written evidence of an agreement with the landlord that certain repairs would be made or that he had requested certain repairs or that repairs are, in fact, required such as a term in the tenancy agreement; letters, e-mails or text message to the landlord from the tenant about repairs, or photographs of the items the tenant says need to be repaired. There is nothing that would tip the balance of probabilities in the tenant's favour. Even if the tenant had applied for a monetary order I would not have granted the application based upon the evidence before me.

Section 72(2)(b) allows an arbitrator to order that any amount to be paid from a tenant to a landlord may be deducted from any security deposit or pet damage deposit due to a tenant so whether the \$300.00 payment made by the tenant is called "rent" or "security deposit" makes no difference to the outcome of this hearing.

The landlord and the tenant gave contradictory evidence as to when the notice to end tenancy was posted to the door of the rental unit. As the parties agreed that the tenancy would end and an order of possession granted to the landlord it is not necessary for me to make any finding on this point.

I find that the tenant owes the landlord \$1200.00 for the December and January rent.

The landlord also asked for loss of rental income for February. The landlord can start advertising from the date of the hearing and should have possession of the rental unit by January 22. It is too early to know whether the landlord will be able to re-rent by February 1 or whether the landlord will, in fact, suffer any loss of rental income for February. According, the application for loss of rental income for February is dismissed, with leave to re-apply. If the tenant's conduct prevents the landlord from showing or re-renting the unit or the tenant leaves the unit in such a condition that the premises are un-rentable the landlord may file a new claim for such losses as may be proven at a hearing.

As the landlord was substantially successful on his application I find that he is entitled to reimbursement from the landlord of the \$50.00 fee paid to file it. The tenant did not have to pay a filing fee so no order will be made.

Conclusion

- a. An order of possession effective 1:00 pm, January 22, 2015, has been granted to the landlord on the consent of both parties. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. I find that the landlord has established a total monetary claim of \$1250.00 comprised of unpaid rent in the amount of \$1200.00 and the \$50.00 fee paid by the landlord for this application and I grant the landlord an order under section 67 in this amount. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that court.

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 13, 2015

Residential Tenancy Branch

