



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, ERP, LRE OLC, PSF, RP OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was sufficiently served on the Tenant by posting on December 18, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated December 18, 2014.
- e. Whether the tenant is entitled to dispute an additional rent increase?
- f. Whether the tenant is entitled to an order that the landlord make emergency repairs and repairs.
- g. Whether the tenant is entitled to an order that the landlord provide services or facilities required by law

- h. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.

Background and Evidence

The rental property contains 5 bedrooms. On or about December 15, 2013 the tenant moved into a smaller bedroom in the upstairs portion of the house. On January 1, 2014 the tenant moved to the large upstairs bedroom. The parties agree the rent was \$475. There is no written tenancy agreement between the parties.

On or about June 1, 2014 the tenant moved to a bedroom on the main floor. The landlord testified that she previously rented this room at \$550 per month. The tenant asked that he be permitted to move into it. The landlord demanded he pay the \$550. The tenant told her he was unable to make that payment. The landlord testified the parties agreed the tenant could move to the rental unit for a rent of \$500 per month. The Ministry pays \$475 of the tenant's rent. The landlord testified the tenant paid the additional \$25 in rent for June and July. She testified her purchased fish food on one occasion and on the second occasion he paid the \$25 in cash. The tenant failed to pay the additional \$25 commencing August 1, 2014 and for each month thereafter.

The tenant testified the rent has always been \$475 and there was no agreement to pay the additional \$25 per month although he acknowledged the landlord discussed the matter with him. He testified the cash payment of \$25 was to reimburse the landlord for a \$5 per month cable vision charge for an additional set of channels. He further testified he purchased the fish food but the landlord reimbursed him once he produced the receipt.

Analysis:

Tenant's Application to Cancel the 10 day Notice to End Tenancy and for an order disputing an additional rent increase:

Section 15 of the Residential Tenancy Act provides as follows:

Requirements for tenancy agreements

- 13** (1) A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.
- (2) A tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
 - (i) the date on which the tenancy starts;
 - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
 - (iii) if the tenancy is a fixed term tenancy,
 - (A) the date the tenancy ends, and
 - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
 - (iv) the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies;
 - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
 - (vi) which services and facilities are included in the rent;
 - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.

The Residential Tenancy Act imposes a legal obligation on the landlord to prepare a tenancy agreement in writing. While an oral agreement is enforceable, the landlord has the burden of proof to establish the contents of such an oral agreement. I determined the landlord failed to prove there was an oral agreement to pay the additional \$25 a month in rent for the following reasons:

- The evidence presented by the landlord is insufficient. She testified she previously rented the room for \$550 per month. However, she failed to present documentary proof to establish this.
- The evidence of the tenant that there was some discussion of increasing the rent by \$25 per month there was no agreement is just as plausible as the landlord's testimony of an agreement.
- The tenant's explanation of the \$25 cash payment for the purpose of reimbursing the landlord for the additional cable vision package is as likely as the landlord's testimony that it was for rent.

- The testimony of the landlord that she applied the tenant's purchase of the fish food to the rent for June and July is in dispute and not supported by documentary evidence.
- The landlord does not have a written agreement as she is obliged to provide under the Act. The landlord failed to provide receipts which would indicate how much was paid and how much was owed
- The e-mail dated August 24, 2014 from the landlord to the tenant is unclear. At best it evidences that the landlord thought she had an agreement that the tenant would pay the additional \$25. He does not prove that he agreed to such a proposal.
- I do not consider the agreement to pay an additional \$5 per month for the additional cable channels as rent. However, the tenant is obliged to pay that sum.

In the circumstances I determined the landlord failed to prove there was an agreement to pay the additional \$25 rent. As a result I determined the rent is \$475 per month and that the tenant has paid the rent when due.

As a consequence I ordered that the 10 day Notice to End Tenancy dated December 18, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Analysis – Landlord's Application for an Order of Possession:

I dismissed the landlord's application for an Order for Possession as I have determined no rent was owed at the time the 10 day Notice to End Tenancy was served on the tenant.

Landlord's Application for a Monetary Order and Cost of Filing fee

With respect to each of the landlord's monetary claims I find as follows:

- a. I dismissed the landlord's claim of \$25 per month for the period August 1, 2014 to January 1, 2015 as I determined the rent was \$475 per month and not the \$500 per month claimed by the landlord.
- b. I determined the tenant reimbursed the landlord the \$5 per month for the additional cable channel to the end of June. The landlord testified she stopped the service approximately one month ago. I determined the tenant owes the landlord the sum of \$5 per month

commencing July 1, 2014 to November 1, 2014 or the sum of \$30. The tenant is not obliged to pay for December as the service was discontinued in December.

- c. I dismissed the claim for the cost of a key and a lock and key as the landlord failed to present sufficient evidence to establish she is entitled to those amounts.
- d. I dismissed the landlord's claim of \$10 for money lent to the tenant as this is not a Residential Tenancy matter and I do not have jurisdiction to make such an award.
- e. I dismissed the claim for the cost of bubble wrap as the landlord failed to prove this claim.

In summary I granted the landlord a monetary order in the sum of \$30 plus the sum of \$25 in respect of the cost of the filing fee (reduced to show the limited success of the landlord) for a total of \$55.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Tenant's Application for emergency repairs and repairs:

With respect to each of the tenant's application for repairs and emergency repairs I find as follows:

- a. I dismissed the tenant's application for an order that the landlord fix the duct work to the house. The rental property is an old house. The tenant failed to provide evidence that there is a bylaw or other law requiring ductwork to all of the bedrooms. The furnace was replaced. The tenant failed to prove there is insufficient heat in the rental unit.
- b. I ordered that the landlord hire a licensed plumber to replace the wax ring of the tenant's toilet.
- c. I ordered that the landlord clean the black mold in the bathroom and basement area of the rental property.
- d. I ordered that the landlord hire a licensed exterminator to treat the house for rats and fleas.

- e. I ordered that the landlord hire a licensed electrical inspector to inspect the electrical system and make any necessary repairs.

I further ordered that the repairs be completed within 21 days of the date of this order.

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 20, 2015

Residential Tenancy Branch

