



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, PSF, OPR, MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. A Monetary Order for compensation or loss - Section 67; and
3. An Order for the Landlord to provide services or facilities required by law - Section 65.

The Landlord applied for:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent or utilities - Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order that the Landlord provide services or facilities?

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to the monetary amount claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on October 19, 2014. Rent of \$800.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$400.00 as a security deposit. On December 9, 2014 the Tenant was given a 10 day notice to end tenancy for unpaid rent (the "Notice").

The Landlord states that the Tenant has not paid December 2014 or January 2015 rent. The Tenant states that he paid the Landlord \$400.00 cash sometime between December 2 and 5, 2014 and that the Landlord did not give him a receipt. The Tenant states that the remaining rent was not paid as the Landlord removed the internet, access to the laundry facilities and power to a bedroom and bathroom. The Landlord denies the receipt of \$400.00 and claims \$2,000.00.

The Tenant states that the tenancy agreement provides for laundry but that the Landlord removed access to the laundry machines around the beginning of December 2014. The Tenant states that upon requesting access the Tenants were told that the machines were broken. The Landlord states that the tenancy agreement provides that the Tenant pay for the use of the laundry machines in the amount of \$10.00 per load and that the Tenant has never paid this amount. The Landlord states that since the Tenant failed to pay rent or for the use of the laundry the Landlord refused access to the Tenant. It is noted that the tenancy agreement provides for "laundry" with the words "not free" written alongside the term. The Tenant states that he has three small children and that their laundry is piling up. The Tenant states that he has not incurred any expense for doing the laundry since the loss of access but has had to take some laundry to his parents. The Tenant requests access to the laundry and claims compensation for the loss and inconvenience of not having access to the laundry.

The Tenant states that although the provision of internet is not contained in the tenancy agreement, internet access was provided from the onset of the tenancy until the beginning of December 2014. The Tenant states that the Landlord told him that internet was no longer available as they were in the process of obtaining a new service provider. The Tenant states that without access efforts to find a new residence is made difficult. The Tenant claims restored access to the internet and compensation for the loss. The Landlord states that they are not obliged to provide the Tenant with access to the internet as it is not contained in the tenancy agreement.

The Tenant states that power to the master bedroom and bathroom was disconnected by the Landlord in the beginning of December 2014 and has done nothing to return the power to the unit. It is noted that electricity is included with rent in the tenancy agreement. The Tenant states that when he asked the Landlord to inspect the power problem the Landlord states that they did not know what was wrong. The Tenant states that the Landlord never came to the unit to check or inspect the problem. The Landlord states that all the power is working in the unit and that the Tenant never told them anything was wrong with the power. The Landlord states that he did not inspect the unit for a lack of power after receiving the Tenant's application. The Landlord states that the Tenant told them not to enter his unit. The Tenant states that he never told the Landlord not to enter the unit to make repairs and asks that the Landlord inspect and repair the power to the unit immediately.

The Tenant claims \$80.00.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the

landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Although the Tenant has disputed the Notice, the Tenant's reason for not paying the rent is due to the lack of the Landlord's lack of compliance. Given this invalid reason and based on the Tenant's evidence that the full rent was not paid for December 2014 I find that the Notice is valid and that the Tenant is not entitled to a cancellation of the Notice. I dismiss the Tenant's claim for such a cancellation.

Although the Tenant's evidence is that part of December 2014 rent was paid I found this evidence to be vague. Considering that the Tenant has no supporting evidence of this payment, I prefer the Landlord's evidence and find on a balance of probabilities that the full amount of rent for December 2014 is unpaid and that the Landlord is entitled to this amount as well unpaid rent of \$800.00 for January 2015 for a total of **\$1,600.00**.

As the Notice is valid and effective, I find that the Landlord is entitled to an order of possession. In providing the order of possession I take into account the Tenant's family size, the Tenant's liability for all of January 2015 rent and the lack of access to the internet to make this order effective January 31, 2014.

Section 1 of the Act defines facilities and services to include laundry facilities. Rent is defined as money paid in return for, inter alia, services and facilities. Section 7 provides that a landlord may charge a fee for services and facilities if those facilities are not required to be provided under the tenancy agreement. As the tenancy agreement provides for laundry, as no charge for that laundry is identified in the tenancy agreement and as the Act does not allow for a fee for the use of laundry facilities, I find that the Landlord may not charge the Tenant for the use of the laundry machines as this would be included in the rent. Based on the undisputed evidence of the Parties that the laundry access was removed I find that the Landlord is not in compliance with the tenancy agreement and I order the Landlord to immediately provide access to the laundry by the Tenant and at no cost to the Tenant until the end of the tenancy.

As the tenancy agreement does not include the provision of internet I dismiss the Tenant's claim in relation to a loss of internet.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Based on the undisputed evidence that the Tenant was not able to complete laundry at the unit, accepting that this caused an inconvenience to the Tenant and considering that the loss of access has been ongoing for over a month, I find that the Tenant is entitled to compensation.

Given the Tenant's evidence in relation to the provision of power to the unit and considering the Landlord's evidence that they did not check the power even after receiving the Tenant's application I find that the Tenant has substantiated a loss of power and that the Landlord failed to inspect and repair the lighting. As the tenancy agreement requires the provision of electricity I order the Landlord to inspect and repair the lighting in the rental unit between 3 and 5 pm before the end of January 13, 2015. As the tenant has been without power to two rooms for over a month I also find that the Tenant is entitled to compensation. As the Tenant has claimed \$80.00 for its losses and considering that this is a reasonable amount I find that the Tenant has substantiated an entitlement to **\$80.00**.

Although the Landlord has been mostly successful with its application as the Tenant was also successful with its application I decline to award the Landlord recovery of the filing fee. Deducting the security deposit of **\$400.00** plus zero interest and the Tenant's entitlement of **\$80.00** from the Landlord's entitlement of **\$1,600.00** leaves **\$1,120.00** owed by the Tenant to the Landlord.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on January 31, 2015.

I Order the Landlord to retain the security deposit plus interest in the amount of \$400.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$1,120.00**. 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 16, 2015

Residential Tenancy Branch

