



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, CNR, MNR, RP, RR, OLC*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent. The tenant applied for an order directing the landlord to carry out repairs, reduce rent and comply with the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord but agreed that her evidence submitted to the Residential Tenancy Branch Office the day before this hearing, was not provided to the landlord. Therefore I explained to the tenant that this evidence would not be used in the making of this decision. Both parties gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession and a monetary order for unpaid rent?
Is the tenant entitled to the remedies that she has applied for?

Background and Evidence

The tenancy started on June 01, 2014 for a fixed term of one year. The monthly rent is \$990.00 payable on the first of each month.

The landlord testified that the tenant was late paying rent several times during the tenancy and he served the tenant with multiple notices to end tenancy. The tenant failed to pay rent for December 2014 and for January 2015. On January 09, 2015, the landlord served the tenant with a notice to end tenancy for \$1,990.00 in unpaid rent. The tenant disputed the notice but did not pay rent and continues to occupy the rental unit. The tenant agreed that she owes \$1,990 in unpaid rent.

The tenant stated that the refrigerator in the rental unit did not work properly and she informed the landlord about the problem in August 2014. The landlord stated that he first heard of the problem when he came to collect rent in November 2014. The landlord agreed that the seal of the refrigerator seemed to be compromised and agreed to correct the problem or replace the refrigerator.

The tenant stated that the landlord did not follow up until the end of December. The landlord filed text messages that show that he offered to replace the refrigerator on December 27, 2014 and the tenant was not home. The tenant stated that she was in and out of the hospital during the months of December and January and as of the date of this hearing, the problem was not resolved.

The tenant also stated that the stove “leaked” to which the landlord replied that it was not possible for a metal appliance to leak. The tenant complained that there were mice. The landlord denied the allegation and stated that the tenant had a cat and a dog and it was unlikely that she had mice.

The tenant has applied for a rent reduction because of the problems she alleged she faced during the tenancy

Analysis

Landlord's application

The tenant received the notice to end tenancy for unpaid rent, on January 09, 2015 and did not pay rent within five days of receiving the notice to end tenancy, pursuant to Section 46 to set aside the notice to end a residential tenancy, and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the notice. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The order may be filed in the Supreme Court for enforcement.

I also find that as agreed to by the tenant, the landlord is entitled to \$1,990.00 for unpaid rent

Tenant's application

Since the tenancy is coming to an end the tenant's application for an order directing the landlord to carry out repairs and to reduce rent is moot.

I further find that by his own admission, the landlord became aware that the refrigerator was not working properly in November 2014 and did not act in a timely manner to resolve the problem. As a result the tenant incurred a loss due to spoiled groceries and having to eat at restaurants. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the tenant \$300.00 toward the extra expenses she incurred for the months of November 2014 to January 2015.

The tenant has not proven her allegations of a leaking stove and a mice infestation.

Overall the landlord has established a claim of \$1,990.00 and the tenant has established a claim of \$300.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$1,690.00 which consists of outstanding rent of \$1,990.00 minus the tenant’s entitlement of \$300.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective **two days after service** on the tenant. I also grant the landlord a monetary order in the amount of **\$1,690.00**

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 29, 2015

Residential Tenancy Branch

