



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AMENDED DECISION

Dispute Codes

OPR, MNR, MNDC, MNSD, FF
CNR, DRI, ERP, RP, LRE, MNDC, OLC, RR, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant's application disputes an additional rent increase and seeks an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlords' right to enter the rental unit; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

The parties all attended and the tenant and one of the landlords gave affirmed testimony. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the landlords will have an Order of Possession effective March 1, 2015 at 1:00 p.m. and the tenancy will end at that time. Therefore, I grant the Order of Possession and I dismiss the tenant's application for an order cancelling the notice to end the tenancy.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlords have increased the rent contrary to the *Residential Tenancy Act*?
- Has the tenant established that the landlords should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the landlords should be ordered to make repairs to the unit, site or property?
- Has the tenant established that an order should be made suspending or setting conditions on the landlords' right to enter the rental unit?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to maintenance and repairs?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the landlords' failure to maintain the rental unit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on November 1, 2011 and expired on December 31, 2014. The tenancy is currently on a month-to-month basis, and the tenant still resides in the rental unit. Rent in the amount of \$875.00 per month is payable in advance on the 1st day of each month, although the tenancy agreement, a copy of which has been provided, does not specify the day rent is payable. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$387.50 which is still held in trust by the landlords, and no pet damage deposit was collected.

The landlord further testified that the parties had entered into several fixed-term tenancies in writing. The first was signed on November 1, 2011 for a term commencing November 1, 2011 and expiring after one year for rent in the amount of \$805.00 per month. The second was signed on March 30, 2013 for a tenancy commencing May 1, 2013 and expiring on November 30, 2013 for rent in the amount of \$825.00 per month. The next was signed on December 1, 2013 for a fixed period ending May 31, 2014 and rent in the amount of \$850.00 per month. Another fixed term was entered into for June 1, 2014 to August 31, 2014 for rent in the amount of \$850.00. The latest tenancy agreement commences September 1, 2014 and expired on December 31, 2014 for rent in the amount of \$875.00 per month.

The landlord further testified that the tenant is currently in arrears of rent the sum of \$2,170.00. The landlords issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and have provided a copy for this hearing. The notice states that the tenant failed to pay rent in the amount of \$2,370.00 which includes \$200.00 late fees, although nothing in the tenancy agreement refers to late fees.

When the landlord attended the rental unit on December 1, 2014 to collect rent the tenant pointed out an issue with the bathtub and other items, such as new curtains and repair to the doors in the bathroom and the kitchen, but didn't pay the rent. The tenant promised to pay and the landlord committed to calling a plumber. The tenant paid \$400.00 of the rent and the landlord called a plumber asking that the plumber coordinate a visit with the tenant and provided the plumber with billing information. By December 12, 2014 the landlord still didn't have the rent as promised and tried to reach the tenant. The plumber visited twice and snaked the bathtub but advised there would still be occasional backwash from the drain and that he needed to get into the adjoining suite. The landlord tried to reach the tenant, left messages since December 12, 2014 but has received no response. The landlords' realtor has advised that the realtor has been unsuccessful in getting ahold of the tenant as well.

The landlord also testified that a hydro bill remains outstanding, and the hydro account is in the tenant's name. The landlord fears that if the tenant does not pay it, the hydro company will bill the landlords.

The landlords seek a monetary order for the unpaid rent and late fees totalling ~~\$2,370.00~~ \$3,200.00 as well as an order permitting the landlords to keep the \$387.50 in partial satisfaction of the claim.

The tenant testified that the landlord is incorrect with respect to the first tenancy agreement, in that rent was \$775.00 per month, not \$805.00, and the parties had an agreement to revert to a month-to-month tenancy.

The tenant also testified that the landlord has not provided the tenant with copies of the tenancy agreements, and only collect rent in cash without ever issuing a receipt.

The tenant further testified that the bathtub does not drain and has to be baled by hand. The tenant told the landlord about it and a plumber was called who said that it required an extensive job and that having pipes joined from one unit to another was illegal. The landlord promised to get access to the other apartment twice so that the repair could be completed, but twice the landlord didn't show up to do so. Also, the plumbing company has recently told the tenant that the work order has not yet been dealt with, and there have not been any messages on the tenants' phone from the landlord.

The tenant agreed to an increase in rent with each of the tenancy agreements thinking it was legal and hoping for repairs to be done. Other repairs are also required: the kitchen and bathroom drawers and doors are broken; closet doors were to be replaced from the beginning of the tenancy; the landlords did not clean the rental unit prior to the tenant moving in; and the balcony is unusable because stuff belonging to previous tenants is still there. The landlords told the tenant it was the tenant's responsibility to remove it. The tenant seeks an order that the repairs be completed.

The tenant also testified that the landlord accused the tenant of changing the locks to the rental unit, so obviously tried to enter. The tenant did not change the locks and seeks an order suspending or setting conditions on the landlords' right to enter the rental unit.

The tenant also seeks monetary compensation for having to manually empty the bathtub and other repairs promised, as well as for not being able to use the balcony since the beginning of the tenancy. The tenant claims 20% of rent paid.

The tenant also testified that the hydro bill is in the tenant's name and is not up-to-date, but will be transferred with the tenant when the tenant moves.

Analysis

Firstly, with respect to the rental increases, the *Residential Tenancy Act* states that a landlord may increase rent each year, but must use the approved form, provide at least 3 months notice to the tenant, unless the tenant agrees in writing, and the regulations specify by what amount rent can be increased. In this case, the tenant signed each tenancy agreement and testified that she agreed with the rental increases but expected repairs to the rental unit. Rent and repairs are two very different issues in a tenancy, however, having agreed in writing to the rental increases, I find that the tenant's dispute is unfounded, and I dismiss that portion of the tenant's application.

The *Act* also defines “emergency repairs” as repairs that are:

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

In this case, I am satisfied that damaged or blocked sewer pipes or plumbing fixtures falls within the definition. The parties disagree on what has happened with respect to the plumber, however I am not satisfied that it has been solely the fault of the landlords that the repair hasn’t been made. Neither party has provided me with any testimony or evidence of when the plumber can be available, or if the job could be completed before the end of the tenancy.

With respect to the other repairs required, the tenant is moving out of the rental unit, and therefore, any orders that I make at this point won’t benefit the tenant in any event.

With respect to suspending or setting conditions on the landlords’ right to enter the rental unit, the landlord and contractors retained to complete repairs need to enter the rental unit to do so. The parties disagree on who has left messages for whom, however, the *Act* states that a landlord may enter a rental unit for the purpose of making emergency repairs if it is necessary to protect life or property. Other than that, a landlord must not enter a rental unit unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit.

In this case, the tenant believes the landlord has attempted to enter the rental unit because the landlord accused the tenant of changing the locks. The landlord did not dispute that testimony, and I order the landlords to comply with the *Act* by ensuring the tenant has sufficient notice as described above. That also means that if the landlord gives the tenant notice of entry by posting it to the door of the rental unit, the notice is deemed to have been served 3 days later and the landlord must allow for that and at least an additional 24 hours before entering to make the repairs, unless the tenant otherwise agrees. I therefore order the landlord to comply with the *Act*, and I order the tenant to cooperate with the landlord and contractors.

Since the tenancy is ending, I decline to order the landlords to make repairs or emergency repairs. The landlords are entitled to make repairs for future tenancies, but must provide the notice to the tenant as described above.

With respect to the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, and the tenant's application for a monetary order, it is clear in the evidence and testimony provided that the landlords have promised repairs to the rental unit, but what exactly those promises were is not clear. The landlord testified that he first heard of it when he went to collect rent on December 1, 2014. The tenant testified that the bathtub has not drained since October, 2014 and the other repairs needed to be done since the beginning of the tenancy. The tenant claims 20% of the rent paid, and I find that the sum of \$612.50 is reasonable.

With respect to the landlords' application for a monetary order, it is clear that that tenant owes for unpaid rent for the months of ~~December~~ November, 2014 in the amount of \$475.00 as well as \$875.00 for each of the months of December, 2014, January and February, 2015, for a total of ~~\$2,225.00~~ \$3,100.00. However, the *Act* does not permit a landlord to charge late fees unless a clause to that effect is contained in the tenancy agreement, and no such clause exists. Therefore, I find that the landlords are entitled to a monetary award of ~~\$2,225.00~~ \$3,100.00.

Having found that the landlords owe the tenant \$612.50 and the tenant owes the landlords ~~\$2,225.00~~ \$3,100.00, I find it reasonable to set off the awards. I order the landlords to keep the \$387.50 security deposit and I grant a monetary order in favour of the landlords for the difference in the amount of ~~\$1,225.00~~ \$2,100.00.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fees.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective March 1, 2015 at 1:00 p.m. and the tenancy will end at that time.

The tenant's application for an order cancelling a notice ending the tenancy is hereby dismissed without leave to reapply.

I hereby order the landlords to comply with the *Residential Tenancy Act* by entering the rental unit only as described above.

The tenant's application for an order that the landlords make emergency repairs for health or safety reasons is hereby dismissed.

The tenant's application for an order that the landlords make repairs to the unit, site or property is hereby dismissed.

I further order the tenant to cooperate with the landlord and contractors for the purpose of making repairs and/or emergency repairs to the rental unit.

I hereby order the landlords to keep the \$387.50 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of ~~\$1,225.00~~ \$2,100.00.

These orders are final and binding and may be enforced.

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: February 18, 2015
Amended: March 18, 2015

Residential Tenancy Branch

