Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, AAT, RR, OPR, MND, MNDC, FF

Introduction

In the first application, by filing number, the tenant seeks to dispute a rent increase, to cancel a ten day Notice to End Tenancy for unpaid rent, to obtain an order regarding access and for a rent reduction because of an alleged loss of services or facilities.

In the second application the landlord seeks an order of possession pursuant to the ten day Notice and pursuant to a mutual agreement to end the tenancy effective February 28, 2015. He also seeks a monetary award for the cost of a window repair, for a portion of unpaid February rent and for March rent.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenancy has ended, either by the ten day Notice or the alleged mutual agreement to end the tenancy? Does it show that either party is entitled to any of the other relief claimed?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home. The tenancy started in June 2014 for an initial six month fixed term and then month to month. The rent was initially $700.00 per month. The landlord holds a $350.00 security deposit.

In January 2015 the landlord and tenant had a discussion about the fact that Mr. J.B. had been spending time at the rental unit with the tenant and her young daughter. Although Mr. J.B. was initially considered to be an occasional guest, the landlord says he noticed that Mr. J.B. started to receive mail at the house and concluded he was residing there.

The landlord wanted to raise the rent to $850.00 because of the additional occupant. The tenant disagreed. The tenancy agreement is silent regarding the number of occupants permitted to reside in the rental unit.

On January 26, 2014 the parties signed a mutual agreement to end the tenancy effective February 28, 2015. The tenant continues to reside in the premises.

On or about February 5, 2015 the landlord served the tenant with the ten day Notice to End Tenancy being challenged in this proceeding. The Notice demands that the tenant pay $150.00 of rent that was due February 1st and $100.00 for a broken window.

In regard to the window, it is the outside pane of the bathroom window. It is unclear when or how it was broken. The landlord has had it repaired. His insurance company covered the cost. He does not allege that he has had to pay a deductible or that his premiums somehow increased as a result of the claim or that he is otherwise out of pocket for the work.

The tenant's representative Mr. J.B. did not give any evidence about access issues or about loss of any services or facilities. In regard to the mutual agreement the end the tenancy that the tenant signed, he says the tenant did not appreciated what she was signing.

It is agreed that the tenant has not paid any rent or "use and occupation" money for March.

Analysis

Section 46 of the *Residential Tenancy Act* (the "*Act*) provides that a Notice to End Tenancy for non-payment of rent may only demand that a tenant pay outstanding rent and/or utilities within the five day prescribed period or face termination of the tenancy. I does not permit a landlord to demand payment of repair costs.

The ten day Notice here demanded payment of $100.00 for a broken window. I find that the Notice was invalid for that reason and it is cancelled.

The tenant's argues, relayed through Mr. J.B, that she did not know what she was signing when she signed the mutual agreement to end the tenancy. In law this argument or defence is called "*non est factum*." The law is that any person who fails to exercise reasonable care in signing a document is precluded from relying on *non est factum* as against a person who relies upon that document in good faith and for value. (*Marvco Colour Research Ltd. v. Harris*, [1982] 2 SCR 774, 1982 CanLII 63 (SCC))

In this case, it is apparent that the tenant did not exercise reasonable care in signing the document. She should have read it first. There is no evidence that the document was misrepresented to her by the landlord. The landlord relied on it in good faith and in

consideration of not pressing the matter of Mr. J.B.'s possible occupancy. I find that the tenant is bound by the mutual agreement to end the tenancy.

This tenancy therefore ended on February 28, 2015. The tenant is overholding and the landlord is entitled to an order of possession.

The tenant has not adduced evidence to support her claim for an order regarding access or for a rent reduction for loss of a service or facility. Those claims are dismissed.

The tenant claims she has had an unlawful rent increase imposed on her. Part 3 of the *Act* prevents a landlord from imposing a rent increase more than once every 12 months, only in a prescribed amount, after giving two months' notice and only by serving notice in the approved form. Any other rent increase could only have been by mutual agreement. There was not such mutual agreement. The tenant's rent was and remained at $700.00 per month.

Reviewing the landlord's Monetary Order Worksheet, I dismiss his claim for recovery of the window repair cost as he has not suffered a loss resulting from it. I dismiss his claim for $150.00 rent from February as this amount is composed of the purported rent increase I have found was not effective.

I grant the landlord an award of $700.00 for loss of March rental income, plus the $50.00 filing fee for this application. I authorize him to retain the $350.00 security deposit in reduction of the amount awarded. There will be a monetary award against the tenant for the remainder of $400.00.

Conclusion

The landlord will have an order of possession and a monetary order in the amount of $400.00.

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: April 02, 2015

Residential Tenancy Branch