



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant compensation and/or to reduce rent for repairs not done, for essential services cut off and for facilities not provided;
- d) To order the landlord to obey section 29 of the Act regarding entry into the unit; and
- e) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated March 19, 2015 to be effective March 9, 2015 and the tenant filed an Application to dispute it on March 11, 2015. The effective date on the Notice is automatically corrected to March 19, 2015 pursuant to section 53 of the *Residential Tenancy Act* as the landlord stated and the evidence supports that the signature and effective dates were just reversed on the Notice. The landlord said he never received a copy of the tenant's application as it was addressed to his old address at the same residence as the tenant and the tenant has the keys to the mailbox and would not give him keys. He said he found out about the hearing when he called the Residential Tenancy Branch to find out what happened with his Notice to End Tenancy. However, he said he would prefer to waive the service of the Application and go ahead with the hearing as he needs an Order of Possession if the tenant is not successful.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and reason to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that there was a flood in the property and that they have had no utilities such as water and hydro?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It was extremely difficult to conduct this hearing as the tenant commenced and continued in the hearing using very foul language both to the landlord and me. Although warned a number of times, he persisted; then he left the conference when we refused to engage in conversation at that level with him. He then returned and continued with the same foul language, constantly interrupting. The female tenant then joined the conference and tried to give some evidence. She agreed they had not paid rent to the landlord since the end of December. She said an upstairs tenant had stolen the January rent. At that point, the male tenant took over the conversation and began fighting with her. He was demanding an oral hearing but I pointed out that he can be heard adequately in this teleconference if he explains his situation without using foul language and does not interrupt the landlord when he attempts to give evidence. He continued fighting with the female tenant and using abusive language to everyone.

The tenant's evidence in file and as given by the female tenant is that they lost water and hydro and the landlord refused to do the repairs. The landlord said he had tried to address this issue on January 5, 2015 with a plumber but the tenants refused him entry; an email from the tenants confirms this as they thought he was a bank representative. The text messages from the tenant show the landlord was contacted on February 19, 2015 regarding the issue with the water stating they were not paying rent for this reason. The landlord provided email evidence showing he had sent a repair person to find out what had to be done but he was refused entry. On March 25, 2015, the landlord again requested entry and the keys to other parts of his home including the mail box key but his representative was denied. On March 29, 2015 a Notice for inspection and repairs was issued (copy in evidence). An agent and a co-owner were finally granted access on April 15, 2015 to do inspection for repairs. There was no mention of a water issue to the co-owner or agent. The landlord provided evidence that his property manager in December was a relative of these tenants and he removed her authority in January 2015. He said the number provided for emergency repairs was not used, they did not use the procedure of opting to repair and provide him with a receipt and deduct it from their rent. They just have not paid rent or utilities for several months.

The evidence in file shows the unit was vacated by former tenants on December 1, 2014 and these tenants moved in; the landlord says he has no copy of a lease (if there is one) as the former property manager is longer employed by him. It appears from

emails that rent was to be \$900 a month, a security deposit of \$200 was paid (although \$450 was requested) and the tenants were to be responsible for 40% of the hydro. The landlord claims rent and hydro are both owing. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 26 of the Act states that a tenant must pay rent when due, whether or not the landlord has fulfilled his obligations under the Act. I find the tenant has paid no rent for several months and none since the Notice to End Tenancy was issued on March 9, 2015. Although the tenant disputed the Notice in time, the weight of the evidence is that rent was not paid and the tenant did not pay for any emergency repairs which might have been deducted from rent following the procedure in section 33 of the Act and as also provided as an option by the landlord. I dismiss the Application of the tenant to cancel the Notice to End Tenancy. I find the landlord entitled to an Order of Possession pursuant to section 55 as requested in the hearing.

The onus is on the tenant as claimant to prove on a balance of probabilities that they are entitled to a rebate of rent or other compensation for utilities not provided or repairs not completed. I find insufficient evidence to support the tenants' allegations of no water or hydro. I find the tenants raised these issues with the landlord only when he demanded rent arrears be paid. I find the landlord did not neglect requests but tried to send a repair person who was denied entry. I find also that the tenants did not report this problem to the co-owner or agent when they did an inspection on April 15, 2015 which seems unlikely if they were suffering these limitations. I find the landlord's evidence most credible as it is supported by copies of text messages between the parties and an unpaid hydro bill dated January 14, 2015. I find insufficient evidence that repairs or emergency repairs are needed. I dismiss this portion of the tenant's claim.

Conclusion:

I dismiss the Application of the tenant in its entirety. I find the landlord entitled to an Order of Possession effective two days from service.

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: May 05, 2015

Residential Tenancy Branch

