



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNSD, O, OPR, FF

Introduction

In the first application the tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent, received May 11, 2015 and for an extension of time to do so. She also seeks a monetary award for reimbursement of repair costs.

In the second application the landlord seeks an order of possession pursuant to the Notice and a monetary award for unpaid rent and utilities.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that either party is entitled to any of the relief requested?

Background and Evidence

The rental unit is the three bedroom upper portion of a house. It is composed of two levels. The bottom or basement of the home is a separate rental unit, rented to others.

This tenancy started January 1, 2015. It appears that the landlord became the new owner of the property a few weeks later.

The rent is \$1580.00 per month, due on the first of each month, in advance. The tenant is obliged to pay $\frac{3}{4}$ of the "hydro" bills. The landlord holds a \$790.00 security deposit and a \$200.00 pet damage deposit.

The tenant brought her application as A.-M. L.. The landlord named her as a respondent as A.-M.A., as she is named in the written tenancy agreement. At hearing the tenant stated that her lawful name is A.-M.A., though during the hearing she announced herself into the hearing as A.-M.L.

The style of cause has been amended accordingly to show both names.

The Notice in question alleges that the tenant failed to pay rent of \$1580.00 due May 1, 2015 and utilities of \$294.04. Those amounts and the fact of non-payment are not disputed by the tenant.

The landlord also claimed June loss of rental income.

At hearing the landlord requested July rental income as well as an additional utility charge for utilities. I allowed the landlord to amend his claim to include the loss of July rental income as the facts to establish that claim will be the same facts as relate to the claims in the landlord's application.

I denied the landlord's request to amend his claim to include further utility charges. Before those amounts become due the landlord is obliged to produce the utility bill(s) to the tenant for payment. He is free to re-apply if the tenant does not pay her agreed portion after that.

The landlord called as witnesses two police officers who gave evidence to the effect that all four occupants of the home, two male tenants in the basement suite and the tenant and another woman in the upper suite, know each other, are associated in a criminal fashion and are all "well known" to the police in regard to crimes involving stolen property and drug activities. One of the occupants of the lower suite was described as a "high risk offender." The respondent tenant has drug related charges pending and the other woman in the suite has a "lengthy and colourful" history.

The police officers say that on June 11 a warrant was enforced at the building resulting in the seizure of six guns, ammunition, illegal drugs and stolen property. It appears that the seizure was made from the lower suite.

In any event, a local government bylaw enforcement officer attended and arranged to have the entire home boarded up on June 12th, pursuant to a local government bylaw regarding homes used in the commission of offenses.

The landlord says that in addition to the May rent, the tenant has not paid money for June or July.

The tenant testifies that as a result of a flood caused by an overflowing toilet tank in the bathroom on the upper floor of the rental unit there was significant damage to her suite. She says that she arranged with the landlord to retain certain contractor friends or acquaintances of hers to conduct repairs. She says the landlord owes her \$900.00 for money she paid to "D" for granite tile. She says the landlord was to waive rent for two months because of the condition of the premises. She says that the microwave, fridge and dryer all broke down. She says she is owed an additional \$900.00 for floor work by another person, which she paid. She says that the local government officer boarded up the residence because it was "unliveable."

In response the landlord referred to various text and email correspondence indicating that the parties had agreed to \$1185.00 in compensation for the inconvenience caused by the flood and that the amount was taken off the March rent. He says he has paid the \$900.00 for the tile and is awaiting a contract with the flooring worker, as requested of the tenant.

The landlord says he was unaware of the police raid on the house until afterward. The police kicked in the front door. He says the bylaw officer boarded up the house under a bylaw dealing with premises used in the manufacture of controlled substances. The premises cannot be opened up until he satisfies the local government that it is in compliance with the law.

He says that the local government closure notice was posted on this tenant's front door and on a window in the rear.

Analysis

The evidence regarding criminal activity in the home is not directly related to the central issues; payment of rent and utilities and reimbursement of repair costs. That evidence does however go to the credibility of the testimony of the parties. Where the testimony of the landlord and the tenant differs and where is no other objective corroboration of the tenant's evidence, I prefer the testimony of the landlord.

In regard to the tenant's claim for recovery of repair costs, the landlord's testimony, text evidence and written agreement with the tenant for "one time compensation" for

inconvenience caused by the flooding, show that at present he does not owe the tenant any money. I dismiss her claim in that regard.

In regard to the tenant's assertion that the microwave, fridge and dryer are broken, those claims, either as repair requests or compensation requests, are not clearly mentioned in her application for dispute resolution and so are not issues that can be fairly dealt with at this hearing. She is free to re-apply in that regard.

The tenant's application to cancel the ten day Notice to End Tenancy was made nine days after receipt whereas s. 46 of the *Residential Tenancy Act* (the "Act") only permits five days. I grant the tenant the necessary extension of time to apply to cancel the Notice.

The Notice claims that the tenant failed to pay \$1580.00 in rent due May 1, 2015 and \$294.04 of utilities following written demand on April 11, 2015.

I find that the claims in the Notice were correct. The tenant owed those amounts at that time. It should be noted that s. 26(1) 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."

The tenant has not paid the amounts demanded in the Notice. As a result, I find that this tenancy ended on April 22, 2015 as a result of the Notice. The landlord is entitled to an order of possession.

I grant the landlord a monetary award of \$1580.00 for unpaid May rent.

The tenant has continued to occupy the premises since then. The fact that she cannot lawfully enter the premises because of the local government closure of the home is a matter, frankly, between her, the police and the local government. In so far as her relationship with the landlord is concerned, she has retained possession of the rental unit. The landlord has not been at liberty to retake possession or rent to others.

Because of this, I find the tenant is liable to the landlord for loss of rental income from the months of June and July 2015 and I award him \$3160.00 in that regard.

Conclusion

The landlord is entitled to a monetary award of \$4740.00 for rent and loss of rental income, plus \$294.04 for outstanding utilities, plus recovery of the \$50.00 filing fee.

I authorize the landlord to retain the \$990.00 of deposit moneys he holds, in reduction of the amount awarded. There will be a monetary order against the tenant for the remainder of \$4094.04.

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: July 07, 2015

Residential Tenancy Branch

