



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNR, MNDC, OLC, ERP, RP, PSF, OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order, and orders compelling the landlord to comply with the Act, perform repairs and provide services or facilities. The landlord also filed an application for an order of possession, a monetary order and an order authorizing her to retain the security deposit. Both parties participated at the conference call hearing.

The landlord claimed that although she had received some of the tenant's evidence, she did not receive a copy of his application for dispute resolution and was unaware of the substance of his claim. The tenant claimed that he provided her with a copy of his application together with his evidence. As the tenant's claim was dismissed on its merits, it is unnecessary for me to determine whether the landlord was properly served with the application.

Issues to be Decided

Should the notice to end tenancy be set aside?

Is the tenant entitled to a monetary order as claimed?

Should the landlord be ordered to comply with the Act, perform repairs or provide services?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 15, 2012 at which time the tenant paid a \$375.00 security deposit. They further agreed that rent was set at \$750.00 per month and that the tenant failed to pay rent in the months of June, July and August 2015. They further agreed that the landlord served on the tenant a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenant acknowledged having received the Notice on or about June 3, 2015.

The tenant testified that he did not pay rent because he had lived in the unit with a defective septic system throughout the tenancy and because extensive work on the septic system had disrupted his quiet enjoyment of the rental unit. He further testified that the landlord had promised to pay him \$15.00 per hour for labour performed on the residential property but had not paid him. The tenant sought an award of \$1,445.00 as compensation for labour performed at the rental unit.

The landlord agreed that she offered to pay the tenant \$15.00 per hour for repairs to which she agreed and testified that she had paid the tenant for all the repairs she had authorized.

Analysis

Section 26(1) of the Act provides that tenants must pay the rent when it is due regardless of whether the landlord has complied with the Act. Although the tenant claimed that he had been promised payment for repairs, the landlord denied that she owed him any money and the tenant could not provide evidence to substantiate that claim. The tenant also claimed that he had performed emergency electrical work and believed he was entitled to deduct the value of that labour from the rent. Although section 33 of the Act permits tenants under certain circumstances to perform emergency repairs, which may include repairs to electrical systems, and deduct the cost of the repairs from their rent, section 33 requires tenants to first claim reimbursement and give the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. There is no evidence that the tenant did this prior to withholding his rent in June. Although he mentioned electrical work in a May 25 email, there is no evidence that he provided the landlord with a receipt for a specific amount claimed.

I find that the tenant had no right to withhold his rent and therefore find that the landlord has grounds to end the tenancy. I dismiss the tenant's claim for an order setting aside the Notice and I grant the landlord an order of possession based on the Notice. As the tenant has not paid rent for more than 2 months, I order that the tenancy end 2 days after service of the order of possession on the tenant.

In order to prove his monetary claim for the value of repairs which are not emergency repairs, the tenant must prove that the landlord agreed in advance to compensate him for those repairs. Although the tenant claimed that the landlord promised to pay him for his labour, the landlord denied that she had agreed to compensate him for any of the repairs for which he now seeks compensation. I find that the tenant has not proven his claim on the balance of probabilities and I dismiss the monetary claim. I note that the

tenant's monetary claim did not include a claim for the value of the electrical repairs, which are the only repairs which might have been characterized as emergency repairs.

As the tenancy is ending, I dismiss the claim for orders compelling the landlord to comply with the Act, perform repairs and provide services or facilities as these issues are now moot.

Turning to the landlord's monetary claim, I find that the tenant was obligated under the terms of the tenancy agreement and under the Act to pay rent on the first day of each month. As the tenant acknowledged that he failed to meet his contractual obligation, I find that the landlord is entitled to recover unpaid rent.

Because the tenancy is ending soon and there is a possibility that the landlord could re-rent the unit for part of August, I find it appropriate to award the landlord just one half of the rent for August. I dismiss the claim for the remaining half of August with leave to reapply. I award the landlord \$1,875.00 which represents \$750.00 in rent for each of the months of June and July and \$375.00 in rent for the first half of the month of August.

As the landlord was successful in her claim, I find she should recover the \$50.00 filing fee paid to bring her application and I award her \$50.00 for a total entitlement of \$1,925.00. I order the landlord to retain the \$375.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of \$1,550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant's claim is dismissed. The landlord is granted an order of possession and a monetary order for \$1,550.00. The landlord will retain the security deposit.

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: August 04, 2015

Residential Tenancy Branch

