



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, OLC, ERP, LAT, FF

For the landlord – OPR, OPB, MND, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for an Order for the landlord to make repairs for health or safety reasons; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; to authorize the tenant to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession because the tenant has breached an agreement with the landlord; for a Monetary Order for unpaid rent or utilities; for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the tenant withdrew her application for an Order for the landlord to make emergency repairs; and for an Order to change the locks of the rental unit. The landlord withdrew his application for an Order of Possession on both counts.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of

evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy for cause?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the tenant entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?
- Is the landlord entitled to a Monetary Order for unpaid utilities?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2014 for a fixed term tenancy that must end on October 31, 2015. Rent for this unit is \$900.00 per month and \$150.00 per month for utilities. Rent and utilities are due on the first of each month. The tenant paid a security deposit of \$450.00 at the start of the tenancy.

The landlord's application

The landlord testified that as the tenancy will end on October 31, 2015 in accordance with the terms of the tenancy agreement the landlord withdraws his application for an Order of Possession as the tenant can continue to reside in the rental unit until October 31, 2015 and must then vacate the rental unit.

The landlord testified that the tenancy agreement specifies that rent is \$900.00 a month and the tenant must also pay \$150.00 for utilities. The landlord testified that he agreed the tenant need only pay \$150.00 per month for utilities in the winter months and \$50.00 per month in the summer months. The landlord testified that therefore the tenant must

pay \$1,050.00 from November to May and from June to October the tenant only has to pay \$950.00 for rent and utilities. The tenant only paid \$950.00 from January, 2015 to October, 2015. Therefore the tenant has an outstanding amount due for utilities from January to May of \$500.00.

The landlord seeks an Order permitting the landlord to keep the tenant's security deposit in partial satisfaction of the outstanding utilities.

The landlord testified that there was some damage caused to the garage remote control; however, the landlord does not seek to recover any monetary amount for this damage.

The tenant testified that she had a verbal agreement with the landlord that in the winter she could pay \$1,050.00 and \$950.00 in the summer months. When the tenant's roommate moved out the landlord kindly agreed that the tenant would not have to pay any utilities as the landlord had occasional use of one room and an ensuite bathroom in the rental unit as agreed on the tenancy agreement. The tenant disputed the landlord's claim for \$500.00 in unpaid utilities but did agree that she has only paid \$950.00 each month since January, 2015.

The tenant testified that she has not caused any damage to the rental unit.

The tenant's application

The tenant seeks to have the One Month Notice to End Tenancy cancelled. The tenant testified that she understands she has to vacate the rental unit at the end of October, 2015.

The tenant testified that although she did agree the landlord could use the master bedroom and ensuite bathroom occasionally; the landlord has stayed for two months over December and January. The tenant testified that she was just about to have a baby and did not want the landlords staying in the rental unit for extended periods so since February, 2015 the tenant has refused the landlords' entry to the rental unit and

the tenant has had sole occupancy. The tenant seeks an Order for the landlord to comply with the *Act* with regard to entering the rental unit and ensuring the tenant has adequate heat and hot water in the rental unit.

The tenant seeks to suspend or set conditions on the landlords' right to enter the rental unit and requires the landlords to provide written notice to the tenant before entering the rental unit.

Analysis

With regard to the landlord's application for a Monetary Order for unpaid rent; the tenant agreed that the landlord and tenant had a verbal agreement in place to reduce the utility payments during the summer months. The tenant also stated they had a further verbal agreement that utilities did not have to be paid at all. When verbal agreements are made between a party and at a hearing the parties contradict each other's testimony then it is impossible for a third party to interpret the verbal agreement made. I am satisfied that the parties agreed the tenants utility payments could be reduced in the summer months and the tenant did make some of these reduced payments; however, I find the tenant also made these reduced payments during the winter months. I find the landlord's evidence more compelling in this matter as the tenant did make some payments towards utilities and therefore I am satisfied with the evidence before me agreed upon by the parties that the utilities were reduced to \$50.00 per month from June to October and were \$150.00 per month for the remainder of the year. I am not satisfied that the landlord agreed the tenant did not have to pay any utilities.

Consequently I am satisfied that the tenant failed to pay \$100.00 per month from January, to May, 2015 leaving an outstanding balance of \$500.00. It is my decision that the landlord is entitled to recover this amount from the tenant and I have permitted the landlord to keep the tenant's security deposit of \$450.00 in partial satisfaction of this claim pursuant to s. 38(4)(b) of the *Act*.

The landlord is entitled to a Monetary Order to recover the balance due of **\$50.00** pursuant to s. 67 of the *Act*.

With regard to the landlord's claim for a Monetary Order for damage to the unit, site or property; the landlord has provided no evidence to support his claim that the tenant has caused damage to the rental unit and did not request a monetary amount concerning any damages. This section of the landlord's claim is therefore dismissed with leave to reapply if at the end of the tenancy the tenant does not repair any damages to the rental unit caused through the tenant's actions or neglect.

With regard to the tenant's application to cancel the One Month Notice to End Tenancy; As this tenancy will end on October 31, 2015 in accordance with the tenancy agreement and the landlord has withdrawn their application for an Order of Possession I hereby cancel the One Month Notice to End Tenancy.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; the tenancy agreement does state that the landlord may have use of a room for a few days and that the tenant does not have any objections to this arrangement. It does not specify how many days in the year or whether or not the rental unit is for sole occupation of the tenant. The tenant agreed the landlord could occupy one room for a few days and while this is an unusual situation I find the tenant cannot now request that the landlord does not have access to the rental unit.

I would however caution the landlord to ensure he provides the tenant with 24 hours written notice before entering the rental unit for any purpose prior to the tenancy ending on October 31, 2015. I further caution the landlord to ensure the tenant has adequate heat and hotwater in the rental unit until October 31, 2015.

With regard to the tenant's application to suspend or set conditions on the landlord's right to enter the rental unit; as I have cautioned the landlord to ensure 24 hours written Notice is provided to the tenant prior to entering the rental unit no further orders will be made to suspend or set conditions on the landlord's right to enter the rental unit.

As both parties applications have some merit I find both parties must bear the cost of filing their own applications.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the *Act* in the amount of **\$50.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The tenant's application to cancel the One Month Notice is allowed. The One Month Notice to End Tenancy for Cause dated July 28, 2015 is cancelled and the tenancy will continue until October 31, 2015.

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: October 07, 2015

Residential Tenancy Branch

