



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, MNR, MNSD, MNDC, LRE, LAT, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for the cost of repairs, loss of income, compensation for loss under the *Act*, lost wages, punitive damages and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied to cancel the notice to end tenancy, for an order restricting the landlord's entry into the rental unit, for authorization to change the locks and for a monetary order for compensation, cost of missing or damaged items and for the filing fee.

This decision must be read in conjunction with the interim decision dated August 08, 2015. This matter was originally heard on May 13, 2015 and then again on August 06, 2015. The hearing on this date – November 03, 2015 is the third time that a hearing was held by conference call to continue the resolution of the dispute between these two parties. Both parties attended all three hearings.

In the initial hearing on May 15, 2015 it was determined that the tenant had moved out on May 02, 2015 and therefore the landlord did not require an order of possession. It was also determined that since the tenancy had ended, the tenant's application to cancel the notice to end tenancy, to change locks and to suspend the landlord's right to enter the unit was also moot and accordingly was dismissed. Therefore the hearing on May 15, 2015 only dealt with the monetary claims of both parties, and was adjourned to be heard on August 06, 2015.

At the time of the second hearing on August 06, 2015, the landlord was still in the process of carrying out the required repairs and had filed estimates of costs. In order for me to make a fair determination of the cost of repairs related to the damage from the toilet overflow that the tenant has agreed was caused by her son, I requested the landlord to provide invoices and proof of payment upon completion of the work.

Accordingly the hearing on August 06, 2015 dealt with all other aspects of both applications and was adjourned to November 03, 2015, for the sole purpose of dealing with the portion of the landlord's claim regarding the repairs from the water damage resulting from the toilet overflow.

The only new evidence permitted for today's hearing was the landlord's evidence of invoices and proof of payment for repairs related solely to the toilet overflow.

The landlord filed the required evidence on October 28, 2015 for a hearing scheduled for November 03, 2015. The tenant acknowledged receipt of evidence submitted by the landlord but stated that she did not have adequate time to respond to the landlord's evidence. The tenant requested additional time to respond.

The tenant pointed out that the latest date on the invoices filed into evidence by the landlord was September 29, 2015. The landlord responded by saying that the invoices were for materials and supplies and since the work was completed on October 18, 2015, he did not have invoices for labor until that date.

Issue(s) to be decided

Did the landlord file evidence in compliance with the timelines set by the Rules of Procedure? Does the tenant need more time to respond to the landlord's evidence? Is the landlord entitled to his monetary claim for repairs?

Background and Evidence

The tenancy started on September 15, 2012 and ended on May 02, 2015. The monthly rent was \$1,275.00 payable on the first of the month and did not include utilities. The tenant paid a security deposit of \$640 and a pet deposit of \$637.00. The rental unit is located in upper level of the house. The basement is rented out separately.

Analysis

Rule 3 of the *Residential Tenancy Branch Rules of Procedure* addresses how to serve the application and the applicant's evidence. Rule 3.1 (d) states that together with a copy of the application for dispute resolution, the applicant must serve each respondent with copies of any evidence accepted by the Residential Tenancy Branch with the application or whatever is available to be served.

The purpose of serving evidence to the respondent is to notify the person being served of matters relating to arbitration and to provide the person with an opportunity for rebuttal.

In this case, the landlord did not have his evidence available to be filed along with his application or at the time he served the notice of hearing on the tenant. Rule 3.5 states that if documents are not available to be filed with the application but which the applicant intends to rely upon as evidence at the hearing, these documents must be received at the Residential Tenancy Branch Office at least five days before the hearing and must be served on the tenant as soon as possible.

The latest date on the invoices that the landlord was required to file into evidence is September 29, 2015. I find that there is no reason why the landlord could not have served copies of these documents to the Residential Tenancy Branch and to the tenant prior to the date that he did (October 28, 2015) which is almost one month after the date of the invoices.

The landlord argued that the invoices were for supplies and the invoices for labor were not available prior to October 18, 2015. Even if I accept the landlord's testimony regarding the dates of the invoices for labour, I still find that the landlord had adequate time to serve these invoices well in advance of the hearing scheduled for November 03, 2015, thereby giving the tenant an opportunity to respond to the landlord's evidence.

Rule 11.5 (b) states that an Arbitrator may refuse to accept evidence of one party if the Arbitrator determines that the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

In this case the tenant indicated that she would be rebutting some to the landlord's claims for the cost of repairs. The tenant stated that some of the landlord's claims were not related to the toilet overflow but were related to a prior flood. Since the tenant did not have adequate time to respond to the landlord's claims, I am unable to hear this portion of the landlord's application.

I dismiss the portion of the landlord's claims for the cost of repairs related to the toilet over flow with leave to reapply.

As per the interim decision dated August 08, 2015, all the claims of the landlord that were not related to the cost of repairs of damage related to the toilet overflow were dismissed. The tenant's application was heard in its entirety and the tenant established a claim of \$471.80.

The landlord currently has in his possession \$1,277.00 for security and pet deposits. The landlord had applied to retain the deposit towards his claim for the cost of repairs.

Since the landlord's claims were not heard and have been dismissed with leave to reapply, I order the landlord to return the deposits (\$1,277.00) to the tenant along with the established claim of the tenant (\$471.80) for a total of \$1,748.80.

I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$1,748.80. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord's claim for the cost of repairs due to the toilet overflow is dismissed with leave to reapply.

I grant the tenant a monetary order in the amount of \$1,748.80.

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: November 03, 2015

Residential Tenancy Branch

