



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Omaxwell Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNR, MNDC, FF

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for nonpayment of rent, and requesting a monetary order in the amount of \$5780.00.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel a Notice to End Tenancy, and a request for recovery of the filing fee, and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

The parties agree on the following:

- This tenancy began on November 1, 2014 with a monthly rent of \$1500.00.
- The tenant was personally served with a 10 day Notice to End Tenancy on September 2, 2015.
- As of today's date there is a total of \$4300.00 in rent outstanding.

The tenant testified that he believes the Notice to End Tenancy should be canceled because the landlord has refused to pay for an emergency repair when a flood occurred in the rental unit.

The tenant further testified that at the time of the flood he contacted the landlord and the landlord told him to clean it up himself, and therefore he spent a total of 39 hours cleaning up the results of the flood.

The tenant further testified that he also paid \$400.00 to someone who assisted him to clean up the flood, although he has not received a receipt from that person or provided one to the landlord.

The tenant therefore argues that he should be allowed to deduct the total amount he is billing the landlord of \$1280.00 from the rent.

The landlord testified that at no time did the tenant ever contact him about a flood in the rental unit and he at no time told the tenant to clean up a flood himself. He was not even aware of the flood until the tenant presented him with an invoice he claimed was for cleaning up after a flood.

The landlord further testified that he has a professional contractor who does repairs on the rental properties and he would never ask a tenant to do a repair themselves, he always has repairs done by professionals to ensure that they are done properly.

The landlord further testified that once he was notified by the tenant of the flood, he was willing to pay the tenant some money towards the work done, however he did not believe the amount claimed by the tenant was reasonable as he suspected that he would still have to have his contractor go in and do the job properly, which turned out to be the case.

The landlord therefore believes that the tenant did not have the right to deduct money from the rent and that's why the Notice to End Tenancy was given. He requests that it be upheld and that an Order of Possession be issued.

Analysis

It is my finding that the applicant has not met the burden of proving that he had the right to deduct any money from the rent for an alleged emergency repair.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

The applicant claims that he contacted the landlord and got the landlords permission to do the repair, however he has provided no evidence in support of that claim, a claim that the landlord adamantly denies.

Further, section 33(5) of the Residential Tenancy Act states:

- (5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant
 - (a) claims reimbursement for those amounts from the landlord, and
 - (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

In this case, although the applicant claims to have paid \$400.00 to someone who assisted with the alleged emergency repair, the applicant has provided no receipt from that person.

Section 33(6) of the Residential Tenancy Act states:

- (6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:
 - (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Clearly, since one or more of the above does apply, the landlord is not obligated to reimburse the tenant for the alleged emergency repairs.

Therefore since it's my finding that the tenant did not have the right to deduct money from the rent for an emergency repair, I will not cancel the Notice to End Tenancy and, at the landlords request, have issued an Order of Possession.

Conclusion

The tenant's application to cancel a Notice to End Tenancy and for recovery of the \$50.00 filing fee is dismissed without leave to reapply.

The tenant's monetary claim against the landlord is dismissed with leave to reapply.

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 10, 2015

Residential Tenancy Branch

