



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF
MT, CNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession and a monetary order for unpaid rent or utilities; for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

The landlord and the tenant attending the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the testimony and evidence provided, all of which is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the outset of the hearing, the parties agreed that the tenancy will end on December 9, 2015 at 1:00 p.m. and the landlord will have an Order of Possession effective that date and time. As a result, the tenant's applications for:

- more time to dispute the notice to end the tenancy, and
- for an order cancelling a notice to end the tenancy, and

- for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and
- for an order that the landlord make emergency repairs for health or safety reasons; and
- for an order that the landlord make repairs to the unit, site or property; and
- for an order reducing rent for repairs, services or facilities agreed upon but not provided'

are hereby dismissed as withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the cost of improvements to the rental unit?

Background and Evidence

The landlord testified that this month-to-month tenancy began on September 15, 2015 and the tenant is currently in the process of moving out. Rent in the amount of \$800.00 per month, including hydro, is payable on the 1st day of each month, and the landlord collected a pro-rated amount for the first month of the tenancy. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No written tenancy agreement has been prepared or signed. The rental unit is a basement suite in a house containing 3 units in total, one of which is also tenanted, and the landlord resides in the other.

The landlord further testified that the tenant failed to pay rent when it was due in October, 2015 and the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the notice). A copy of the 1st of 2 pages has been provided and it is dated October 1, 2015 and contains an effective date of vacancy of October 10, 2015 for \$800.00 of unpaid rent that was due on October 1, 2015. The landlord does not recall the date it was served, but testified that no rent has been paid

since the issuance of the notice. The landlord claims unpaid rent for October, November and December, 2015.

With respect to the tenant's claim for monetary compensation, the landlord testified that the tenant put up some fencing and the landlord expects the tenant to take it with her. The tenant made some other improvements to the kitchen, but the landlord did not agree to any renovations. The landlord told the tenant that if she wanted to put up some cupboards, the landlord showed the tenant where they could not be installed. However, the tenant also replaced countertops or something. The landlord has not recently been in the rental unit and does not know the extent of improvements the tenant has completed, but nothing was agreed to by the landlord. The rental unit was recently renovated, which took 3 months, right up to the beginning of this tenancy.

The landlord's witness testified that she is a tenant in the upper unit of the rental building and has been since February 1, 2015.

The witness also testified that the tenant broke a window having locked herself out of the rental unit and the window has not yet been repaired.

The tenant testified that the parties had agreed at the beginning of the tenancy that the stove would be replaced and a large construction debris pile would be cleaned up, neither of which happened. Further, the fridge was not usable or clean. The tenant also had to replace locks on windows.

The tenant does not know how the window was broken.

The tenant also testified that the landlord arrived at the rental unit on October 1, 2015 with a notice to end the tenancy in hand, and the tenant gave him \$400.00. The notice should not have been issued until the next day and didn't take into account the money the tenant gave the landlord.

The tenant replaced the cupboards and countertops and other improvements and was charged \$1,250.00. The tenant claims that amount from the landlord, and disputes the amount of rent claimed by the landlord, but agrees that no rent has been paid for November or December, 2015. No evidentiary material has been provided.

Analysis

Where a party makes a claim against another party the onus is on the claiming party to prove the claim. In this case, the tenant testified that \$400.00 was paid to the landlord when he arrived a day early to serve a notice to end the tenancy. The landlord has not

provided any evidence to the contrary. The only evidence I have before me is the first page of a 2-page notice which is dated the same day that rent is payable. That seems to corroborate the tenant's testimony that the tenant paid the landlord \$400.00 and the landlord handed the notice to the tenant already completed. Therefore, I find that the landlord is owed \$400.00 for October's rent.

The tenant does not dispute the landlord's testimony that no rent has been paid for November, 2015 and therefore I find that the landlord is owed another \$800.00.

With respect to December's rent, the parties agree that the tenancy will end prior to the middle of the month, and I have no evidence to satisfy me that the landlord will not be able to re-rent it for December 15, 2015, and therefore I grant the landlord a monetary order for \$400.00 for December.

With respect to the tenant's claim, in order to be successful, the onus is on the tenant to establish the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate, or reduce such damage or loss.

The landlord disputes that any permission was given to the tenant to make the improvements. There is no evidence to corroborate the tenant's testimony, or to prove the amount, or to satisfy me that the tenant's claim is as a result of the landlord's failure to comply with the *Act* or the tenancy agreement. There is no evidence to establish any claim whatsoever, and I dismiss the tenant's application.

Having found that the landlord is owed \$1,600.00, I find that the landlord should be ordered to keep the \$400.00 security deposit in partial satisfaction.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I hereby order the landlord to keep the \$400.00 security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,250.00.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective December 9, 2015 at 1:00 p.m. and the tenancy will end at that time, by consent.

I further order the landlord to keep the \$400.00 security deposit, and I grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

These orders are final and binding and may be enforced.

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: December 04, 2015

Residential Tenancy Branch

