



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on November 6, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 46; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 16, 2015 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the dispute substantially linked to a matter that is before the Supreme Court?

Relevant Background and Evidence

The following are undisputed facts: The Parties entered into an oral agreement for the Tenants to move into the unit in December 2008 and pay rent of \$1,500.00 monthly.

The Parties also agreed that the Tenants would make renovations and upgrades to the unit. No security or pet deposit was collected by the Landlord and work to the unit was done at least into 2010. Due to a work injury the Tenants did not make 4 rental

payments in 2010 in the total amount of \$6,000.00 and have not since paid these arrears.

The Tenants state that the unit had previously been used for a grow-op and that the agreement was for the Tenants to get the unit ready for sale at which time the Tenants would be reimbursed for their work. The Tenant states that the whole reason for them moving into the unit was to get it in shape to be sold and to give the Tenants time to earn a down payment for their own house. The Tenant states that the Landlord agreed in 2010 that the rental arrears would be dealt with when the unit was sold. The Tenant states that since 2010 the Landlord never asked for payment on the rental arrears because they were friends and there were no issues.

The Landlord states that although there was an agreement to pay the Tenant for the work on the unit there was no agreement for payment when the unit was sold. The Landlord states and the Tenants deny that the Parties discussed the arrears every couple of months over the past 5+ years. The Landlord states that no application was made for these arrears sooner than August 2015 as she was continually attempting to negotiate with the Tenants and because the Tenants refused to provide invoices for their work.

The Landlord states that in May 2015 the Tenants told the Landlord that they were moving out and wanted to be reimbursed for their time. The Landlord states that the Tenant also told the Landlord that they would offset their work costs with the rents owed.

The Tenant states that the Landlord did not talk with them in May and that the Landlord informed the Tenants on June 2, 2015 that she wanted to sell the house. The Tenant states that the Landlord disagreed on the value of the Tenant's work done on the unit.

The Parties agree that the Tenant commenced an action at the Supreme Court in June 2015 in relation to the renovations done to the unit. The Tenant states that the Parties are in the process of exchanging evidence.

Analysis

Section 58 of the Act provides that an application for dispute resolution must be resolved unless the matter under dispute is linked substantially to a matter that is before the Supreme Court.

The Tenant's evidence that the rental arrears would be dealt with when the unit was sold is supported by the fact that the LL made no effort to enforce any rental payments until June 2015 when the Tenants brought the dispute over their work done to the unit in front of the Supreme Court. It appears most likely to me that the arrangement between the Parties went beyond a landlord tenant relationship. As part of that arrangement, the work done by the Tenant is now a matter in front of the Supreme Court. I find therefore that the matter of rental monies owed and possession of the unit cannot be determined under the Act as it is substantially linked to a matter before the Supreme Court.

Conclusion

Both applications are dismissed.

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: January 12, 2016

Residential Tenancy Branch

