



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RPP, OPT, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- an order of possession of the rental unit pursuant to section 54;

Both parties attended the hearing by conference call, the hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Issue

At the outset the tenant stated that he did not serve copies of the tenant's documentary evidence that were submitted to the Residential Tenancy Branch on October 9, 2015 and October 30, 2015. The tenant provided no justification for not providing this evidence to the landlord. As such, these two documentary evidence packages shall be excluded and will not be considered for this dispute.

The landlord's agent (the landlord) stated that she had served the tenant's girlfriend with the landlord's documentary evidence package on October 26, 2015. The tenant disputed this. The landlord stated that she had a witness, J.H. who was present to the service and that she would be able to confirm service. The landlord had the witness, J.H. call in. The witness, J.H. after identifying herself was unable to communicate as she indicated that she did not speak any English. The landlord stated that they did not have an interpreter for the witness. I find based on a balance of probabilities that the landlord has failed to provide sufficient evidence that the tenant was served with the landlord's documentary evidence on October 26, 2015. The landlord's documentary evidence is excluded.

During the hearing the tenant withdrew the following portions of his application:

- Cancel a notice to end tenancy for unpaid rent- Withdrawn.
- Cancel the request to obtain an order of possession-Withdrawn.
- Cancel the tenant's request to reduce rent for repairs-Withdrawn.

The hearing proceeded on the tenant's request for monetary order for money owed or compensation for damage or loss for \$6,893.00 and return of the tenant's personal property.

After 50 minutes the hearing was adjourned due to a lack of time. Both parties were notified that a new notice of an adjourned hearing would be sent to the confirmed address as noted on the tenant's application for dispute. Both parties were cautioned that no further evidence would be accepted as the hearing has already commenced.

On January 19, 2016 the hearing was reconvened with both parties in attendance.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?
Is the tenant entitled to an order for the landlord to return the tenant's personal property?

Background and Evidence

This tenancy began on December 1, 2013 on a fixed term tenancy ending on May 31, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated December 2, 2013. The monthly rent was \$750.00 payable on the 1st day of each month and a security deposit of \$375.00 was paid on November 23, 2013.

The tenant seeks a monetary claim of \$6,893.00 which consists of:

\$6,893.00 Yard work, Painting, Drywall, Garbage Removal (backyard),
Bathroom Painting, Plugged Sink.

The tenant relies upon a handwritten statement #88516 which details work performed at the landlord's request.

The landlord disputes the tenant's claims stating that no authorization was given to the tenant to perform \$6,893.00 in work for rent. The tenant disputes this referring to the landlord's rental statement which shows that the landlord authorized the tenant to work in lieu of rent on June 1, 2014 for \$330.00 and on May 1, 2015 for \$25.00. The tenant stated that this shows that the landlord had authorized work for rent in the past. The landlord confirmed that the tenant was authorized on these two occasions for work in lieu of rent, but dispute that work of \$6,893.00 was not authorized. The tenant also referred to a cheque for \$3,500.00 dated September 11, 2015 for partial payment by the landlord for work as per invoice #516. The tenant refers to page 7 of his submitted documentary evidence, an unsigned letter dated September 11, 2015 which states,

I agree for M.L. to pay me \$3500.00 on September 11, 2015 as a condition for me to move out.

The landlord disputed this stating that this payment was part of an agreement to mutually end the tenancy. The landlord stated that there was a signed and dated agreement by the tenant.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has

been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. The landlord has disputed the claims of the tenant and the tenant has provided no evidence to support his claim that a work for rent agreement was made for \$6,893.00. The tenant's monetary claim is dismissed.

As for the tenant's request for the return of personal property an agreement was made after discussions between the two parties.

Section 63 of the *Residential Tenancy Act* provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows;

Both parties agree that the landlord will give access to the basement storeroom for the tenant to remove all of their personal belongings from the rental property on Saturday, January 23, 2016 between 11:00 am and 3:00 pm.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties regarding the return of personal property.

Conclusion

The tenant's monetary claim is 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 19, 2016

