



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNR, RR

For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent and to reduce rent for repairs, service or facilities agreed upon but not provided. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order to reduce rent for repair, services or facilities agreed upon but not provided?
- Is the landlord entitled to an Order of Possession?

- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2015. Rent for this unit is \$750.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$375.00 on March 15, 2015.

The landlord testified that the tenant failed to pay rent for November and December, 2015 and January, 2016. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on November 02, 2015 and this was posted on the tenant's door on that date. The Notice states the tenant owes \$750.00 in rent for November. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 12, 2015. The tenant did not pay the outstanding rent but did dispute the Notice within five days.

The landlord seeks a Monetary Order for the unpaid rent of \$2,250.00 plus the filing fee of \$50.00. The landlord requested an Order of Possession effective as soon as possible.

The tenant agreed that she did not pay rent for November, December or January. The tenant testified that the rent was withheld because when the tenant moved into the unit in April, 2015, the carpet was dirty and very old and had mould growing underneath. This has made the tenant ill yet the landlord does not think there is anything wrong with the carpet.

The tenant testified that the landlord verbally agreed to change the flooring in either August or September, 2015. The tenant sought out the cheapest estimates for new flooring but when she took these estimates back to the landlord he said it was too much money and he was not going to do the floor.

The landlord disputed the tenant's claims. The landlord testified that he did not agree to do any renovation in the unit. It was the tenant who wanted the flooring changed to a vinyl floor because her pets had messed on the carpet. The landlord testified that he did not agree to do this work and suggested that the tenant find a more suitable place to live. The landlord testified that he also offered to have the carpets shampooed for the tenant but she said she had no problems.

The tenant testified that her pets have not caused damage to the carpets. There is mould under the carpets which has nothing to do with her animals. The tenant requested a rent reduction because the landlord did not do the new flooring as agreed.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. Section 26 of the *Residential Tenancy Act (Act)* states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I am satisfied from the undisputed evidence before me that the tenant has failed to pay rent for November and December, 2015 and January, 2016 to the amount of \$2,250.00. The tenant may not withhold rent for any repairs unless those repairs fall under s. 33 of the *Act* as emergency repairs or unless the tenant has an Order from the Director, after a hearing, to withhold rent for another purpose. Consequently, I find the landlord will receive a monetary award for the amount of **\$2,250.00** pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for **\$2,300.00**.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. As this Notice was posted to the tenant's door it is deemed to have been served three days later on November 05, 2015. The effective date of the Notice is therefore amended to November 15, 2015 pursuant to s. 53 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

With regard to the tenant's application to cancel the Notice; as I have allowed the landlord's application for an Order of Possession then the tenant's application to cancel the Notice is dismissed without leave to reapply.

With regard to the tenant's application to reduce rent for repairs services or facilities agreed upon but not provided. The tenant testified that the landlord agreed to do the flooring but later changed his mind. The landlord disputed that he agreed to change the flooring. The tenant has the burden of proof in this matter. I am not satisfied that the tenant has provided sufficient evidence to show that an agreement was made by the landlord to change the flooring in the unit or to show that the flooring was in a state of disrepair or unclean. In the absence of any corroborating evidence from the tenant the burden of proof is not met and this section of the tenant's application is dismissed without leave to reapply.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$2,300.00**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the tenant fails to comply with the Order.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application is dismissed in its entirety without 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: January 06, 2016

Residential Tenancy Branch

