



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, MNR, MNSD, OLC, ERP, RP, AS, RR, FF, O

Introduction

This hearing was held in response to the tenant's application for dispute resolution in which the tenant has applied to cancel a 10 day Notice to end tenancy for unpaid rent and utilities issued on August 8, 2016, a monetary order for the cost of emergency repairs, return of the security deposit, an order the landlord comply with the Act, that the landlord make emergency repairs and repairs, the tenant be allowed to sublet, that rent be reduced for repairs, services or facilities agreed upon but not provided and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence.

Preliminary Matters

The tenant applied to cancel a 10 day Notice ending tenancy and indicated that he wishes to remain in the rental unit. Section 2.3 of the Residential Tenancy Rules of Procedure provides:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The tenant has made application requesting orders and compensation. The only matter closely related to unpaid rent and the potential end of tenancy is emergency repairs that would allow a deduction from rent due. Therefore, I applied section 2.3 and the balance of the application was dismissed with leave to reapply. This is dealt with further in the analysis.

The tenant objected to the severing of the claim. I explained that the hearing time would be used to consider the potential end of tenancy and that other orders, pursuant to section 62(3) of the Act could be issued.

The tenant submitted 187 pages of unnumbered documents. The landlord made a 37 page written submission. The parties confirmed receipt of the documents within the required time limit.

Issue(s) to be Decided

Should the 10 Day Notice to end tenancy for unpaid rent and utilities (the Notice") issued on August 8, 2016 be cancelled?

Background and Evidence

This tenancy commenced on June 1, 2013. A copy of the tenancy agreement was supplied as evidence. Initially rent was \$700.00 per month, due on the first day of each month. The tenant and agent agreed that rent was reduced effective October 1, 2013 to \$550.00 and again in May 2015, reduced to \$500.00. The tenancy agreement included a term for rental of the unit; no employment terms were included in the contract. Hydro and telephone were listed on page two of the agreement as not included with rent. The tenant was required to pay one-third of the garbage fee.

The tenant confirmed receipt of a 10 day Notice ending tenancy for unpaid rent or utilities, which had an effective date of August 31, 2016, received on August 10, 2016. The tenant disputed the Notice the next day.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$14,145.43 rent and \$6,808.00 utilities within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The agent confirmed that the rental unit is one of three in the building. The landlord maintains a home on the upper floor and there is a unit below the tenants'. There is a single hydro meter for the building. There is currently an occupant in the lower unit and in the past it has been occupied. On occasion, throughout the year, the landlord returns to the upper unit; for the balance of the time the landlord is out of the country.

There was no evidence that the landlord has had an agent acting on her behalf until recently; the agent at the hearing said he was only recently asked to act for the landlord.

The agent was asked to set out the sum indicated on the Notice for unpaid utilities. The agent did not have any hydro bills before him and did not supply copies as evidence. The landlord submitted a hand-written tally of hydro owed in 2014 (\$1,083.51), 2015

(\$688.80) to August 2016 (\$1,083.02) in the sum of \$2,855.33. Bills were not supplied and the sum differed greatly from that included on the Notice ending tenancy.

When asked to provide submissions in support of the sum indicated as unpaid rent on the Notice the agent said the tenant paid \$1,500.00 in 2015 and two or three months in 2013. The agent said it is obvious the tenant does not pay rent. The agent could not provide a breakdown of rent owed.

The landlord supplied hand-written notes that indicated rent in the sum of \$500.00 was owed for each month from November 2014 to April 2015; inclusive. A July 2016 hand-written notice indicated that the landlord had deducted \$3,354.57 from rent owed, to account for repairs completed by the tenant. Another notice indicated the landlord had deducted \$3,645.43 from rent owed between November 2014 and March 2016.

A total sum provided in the written submission, setting out rent owed for rent in 2014 and 2015 was \$2,145.43.

The tenant said that he has been the caretaker for the landlord and has completed work on behalf of the landlord. The tenant pointed to an April 18, 2016 letter issued by the landlord providing the tenant with permission to rent out the second suite and to use that rent income for repairs.

The landlord submitted a copy of a decision issued on May 11, 2016 in relation to a hearing held on that date (see cover for file number.) The landlord did not attend the hearing. The parties were told I would review that decision, as I am bound by any previous findings. The tenant had applied requesting repairs, compensation and provision of services. That decision recorded submissions by the tenant that he had a verbal agreement to maintain the property. The arbitrator wrote:

"In the absence of a written contract (for work to be performed by the tenant) I am not prepared to interpret whether either party fulfilled the agreed upon terms and I find that the portion of the tenants' application must be dismissed."

The arbitrator dismissed the portion of the claim for emergency repairs and the cost of emergency repairs. The arbitrator went on to order the landlord to "carry out all repairs and remain responsible for the cost of maintenance of the rental unit." The arbitrator also dismissed the tenants' claim for reduced rent.

The landlord submitted a September 7, 2016 letter issued to the tenant directing him to cease performing unauthorized jobs in the home as he was damaging the suite.

The tenant wished to point out expenses he has incurred that would support the payment of rent the tenant believes was due to the landlord. I explained that I would issue orders that I saw fit in relation to the terms of the tenancy. I explained that it appeared the tenant had completed some work for the landlord; however, the tenancy

agreement was bereft of any terms setting out an employment arrangement between the parties.

During the hearing both parties repeatedly talked over each other and the arbitrator. The parties were frequently asked to cease speaking and it was explained that when I interrupted it was to maintain order during the hearing and to obtain relevant submissions. At one point, when I explained my decision in relation to the Notice ending the tenancy, the landlord said it was the arbitrators' fault the tenancy was not ending as a result of the Notice.

I explained that tenancies carry rights and obligations for each party and that there is ample information available on the tenancy branch web site that allows landlords and tenants to become well-versed in their rights and obligations. I suggested that if a landlord is living outside of the country it would not be unwise to assign an agent to act for the landlord, to oversee the tenancy. I also explained that when issuing a Notice to end tenancy the landlord is obligated to have evidence to support the reasons given and that a tenant must provide evidence as to why rent was not paid.

As the landlord was ordered on May 11, 2016 to completed repairs and maintenance I suggested that the tenant place any required repairs, in writing, to the landlord.

Analysis

From the evidence before me I find that the Notice ending tenancy issued on August 8, 2016 is of no force and effect. At the start of the hearing I explained the onus of proof when a tenant disputes a Notice ending tenancy. Residential Tenancy Rules of Procedure provides:

6.6 The standard of proof and onus of proof

*The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. **However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a notice to end tenancy.***

(Emphasis added)

The landlord could not explain the total sum of utilities indicated as owed on the Notice ending tenancy. The landlord could not provide any support of the sum of \$14,145.43 owed for rent shown on the Notice ending tenancy. The hand-written notes supplied by the landlord had no relationship to the sums indicated on the Notice.

Based on the absence of any consistent, organized record-keeping supplied setting out rent and utilities owed that matched the sums included on the 10 day Notice to end tenancy for unpaid rent and utilities issued on August 8, 2016 I determined that the landlord had failed to prove the reasons given on the Notice. The Notice is of no force and effect. The Notice is cancelled.

I then went on to explain that I would issues orders in accordance with section 62(3) of the Act; with the expectation these will bring some clarity to the tenancy.

Therefore, I find and order that rent in the sum of \$500.00 is due on the first day of each month. This was not in dispute. I explained that if rent has not been paid on the first day of any month the landlord is at liberty to issue another 10 day Notice for unpaid rent. The tenant may dispute a Notice and at a hearing the landlord can present evidence in support of the sums on the Notice. The tenant then said he had permission to pay partial rent for October. I explained that if a Notice ending tenancy was issued the tenant would be given the opportunity to present evidence. The parties were also given basic information on service of documents, provision of detail calculations of monetary claims and delivery of evidence. They were also referred to the Rules of Procedure and Residential Tenancy Branch web site.

I find that the landlord and tenant have co-mingled a tenancy with a separate agreement to perform repairs. On May 11, 2016 an arbitrator issued an order that all repairs and maintenance would be the responsibility of the landlord. There was no evidence before me that the tenant is a caretaker or that the tenancy agreement contemplates an employer-employee relationship. In fact the landlord has written the tenant instructing him to cease completing repairs. Therefore, any dispute related to work performed by the tenant and payment owed by the landlord for repairs and maintenance is not a term of the tenancy agreement and jurisdiction is declined. If there are disputes related to work performed the parties must investigate other avenues for settlement.

I have considered the payment of hydro costs against section 6 of the Act; which provides:

Enforcing rights and obligations of landlords and tenants

- 6** (1) *The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.*
- (2) *A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [determining disputes].*
- (3) *A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) **the term is unconscionable**, or*

(c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

(Emphasis added)

The tenancy agreement requires the tenant to pay hydro costs for a building that contains two other suites that are, from time to time, occupied by others. There was no notation on the tenancy agreement that the tenant is required to pay a percentage or share of the hydro; only a percentage was imposed for the garbage service. The lower suite is rented out and the landlord visits in the upper suite.

I find that to require the tenant to pay hydro when there is no single meter for the rental unit is unconscionable and that the term is not enforceable at this time. However, immediately upon installing a separate hydro meter for the rental unit the tenant will be required to pay the hydro. The tenant must then immediately place the hydro service in his own name and pay the bills.

As the tenants' claim has merit I find that the tenant may deduction the \$100.00 filing fee from rent due November 1, 2016. Therefore, November 2016 rent owed will be \$400.00 on November 1, 2016.

Conclusion

The 10 day Notice to end tenancy for unpaid rent and utilities issued on August 8, 2016 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The tenancy does not include an employment contract. Any dispute related to payment to the tenant for work completed; outside of costs contemplated by section 33 of the Act for an emergency repair, are not within the jurisdiction of the Act.

The tenant is not required to pay hydro costs until such time as a single meter to the rental unit is installed. When that occurs the tenant must place the hydro service in his name and pay the hydro costs.

A claim for repairs, emergency repairs and rent reduction has previously been dismissed on May 11, 2016.

Any claim for rent reduction, repairs and emergency repairs incurred, outside of those dismissed on May 11, 2016 are dismissed with leave to reapply. This means that the tenant may not reapply on matters that have been previously dismissed.

As the tenancy has not ended the claim requesting return of the security deposit is premature.

The tenant is entitled to filing fee costs.

This decision is final and binding and 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: October 07, 2016

Residential Tenancy Branch

