



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ISLAND ENTERTAINMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, MNDC, ERP, RP, PSF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession due to unpaid rent; for a monetary order to recover unpaid rent and /or utilities; and to recover the cost of the filing fee.

The Tenant filed an Application requesting money owed or compensation for damage or loss under the Act, Regulations, or tenancy agreement; for emergency repairs; and for the Landlord to provide services and facilities required by law.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing 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.

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.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to money owed or compensation for damage or loss?
- Is the Landlord required to make emergency repairs to the unit for health or safety reasons?

- Is the Landlord required to provide services or facilities required by law?

Background and Evidence

The Parties testified that the tenancy began in May, 2016. The parties stated that there is no written tenancy agreement. The Tenant stated that the verbal agreement for rent is that he pay the Landlord rent in the amount of \$500.00 each month. The Landlord stated that the Tenant is to pay \$600.00 each month. The parties agree that the Tenant paid the Landlord a security deposit of \$250.00.

The Landlords Claim

The Landlord issued the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) dated October 7, 2016. The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$2,000.00 that was due on October 1, 2016.

The Landlord stated that he left the 10 Day Notice on the ground in front of the Tenant's door on October 7, 2016.

The Tenant testified that he was not served with the Notice. He testified that he saw the Notice on the ground but did not pick it up because a friend told him that he does not have to accept the Notice. The Tenant stated that he did not accept or dispute the 10 Day Notice because he has paid all of his rent to the Landlord. The Tenant testified that he always pays his rent in cash to the Landlord and asks for a receipt but he never gets a receipt. The Tenant stated that the Landlord promises to give a receipt the next day but fails to do so.

The Landlord testified that the Tenant pays the rent with cash. The Landlord testified that he does not issue receipts, and that the Tenant never asks for a receipt. The Landlord testified that the Tenant did not pay the rent and that the Tenant owes the following amount of rent:

June 2016	\$100.00
July 2016	\$100.00
August 2016	\$600.00
September 2016	\$600.00
October 2016	\$600.00

The Landlord testified that he was giving the Tenant time to pay the rent, but when he realized the Tenant would not pay, he issued the Tenant the 10 Day Notice.

The Landlord is requesting an order of possession and a monetary order for the unpaid rent in the amount of \$2,000.00

The Tenants Claims

The Tenant is seeking an order that the Landlord perform emergency repairs. The Tenant testified that when he moved into the rental unit in May 2016, it had a toilet, sink, and bathtub. He testified that in June 2016, the Landlord removed the toilet, sink and bathtub and he has not had a bathroom since then. The Tenant testified that the Landlord said he would fix the bathroom but has not followed through.

The Tenant also testified that he has no fridge and no carpet. He stated that there was no fridge and no carpet when he moved into the unit, but the Landlord stated he would provide a fridge and carpet.

The Tenant testified that his monetary claim for \$1,500.00 relates to a payment that his children made to the Landlord. The Tenant states the Landlord has over charged for rent.

The Landlord responded by testifying that when the Tenant moved into the rental unit he was told the unit is not ready to be rented. The Landlord states that the Tenant agreed to rent the unit "as is".

The Landlord testified that sometime in June 2016, he completely gutted the bathroom. The Landlord testified that he removed the toilet, sink and bathtub. He submitted that he agreed to the bathroom renovation when he rented the unit to the Tenant on the condition that the Tenant pays the rent. The Landlord testified that he has not done any work on the unit since gutting the bathroom in July 2016, because the Tenant has not been paying his rent. The Landlord submits that the Tenant has been using the bathroom and shower in his daughter's rental unit.

The Landlord testified that there was no fridge at the start of the tenancy and he did not commit to providing one to the Tenant.

With respect to the Tenants claim for \$1,500.00, The Landlord testified that the Tenant's daughter lives in another unit of the rental building. He testified that \$1,750.00 was paid

to him for unit #3 and that payment is not related to the tenancy that is in dispute in this hearing.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Landlords Claims

The Tenant testified he paid all the rent in cash. The Landlord testified the Tenant failed to pay the rent. The burden of proving a loss is on the person who is claiming compensation for the loss. With respect to the Landlord's claim for unpaid rent in the amount of \$2,000.00, and considering the Tenant's testimony that he paid the Landlord the rent in cash and the Landlord's testimony that he does not issue receipts, the burden of proving that rent was not paid rests with the Landlord.

Section 26(2) of the Act states a Landlord must provide a receipt when rent is paid by cash. The Tenant and Landlord both testified that the Tenant pays the rent in cash. Cash receipts can help to establish when a rent payment has not been made. When a Landlord regularly provides receipts for cash payments there is an expectation that a Tenant will be able to produce a receipt for every cash payment that has allegedly been made. When a Landlord does not provide receipts for cash payments the Tenant cannot be expected to produce a receipt to prove rent payments. If the Landlord regularly issues receipts, and a Tenant is unable to provide a receipt for an alleged payment, it lends credibility to a Landlord's claim that a cash payment has not been made.

In the circumstances before me, the Landlord's failure to provide receipts during this tenancy has impaired his ability to prove that the Tenant did not pay rent. The Landlord did not submit any other evidence, such as a copy of a payment ledger, to corroborate his claim that the Tenant did not pay portions of rent for June 2016, and July 2016, and that the Tenant paid no rent for August, September, and October 2016.

I find that the Landlord's failure to issue a receipt as required by the Act, and the absence of other corroborating evidence, has impaired his ability to prove the Tenant failed to pay rent. The Landlord has provided insufficient evidence to establish that the Tenant failed to pay the rent. Therefore, I find that the Tenant has paid the rent. The 10 Day Notice issued by the Landlord dated June 2, 2016, is set aside. The Landlord's

Application for an order of possession and a monetary order due to unpaid rent is dismissed.

With respect to the amount of rent that was agreed to be paid by the Tenant at the start of the tenancy, the Landlord did not put the tenancy agreement in writing as required by section 13 of the Act. The parties do not agree on the amount of rent that is owed each month and the burden of proof rests with the Landlord who is required to have a written tenancy agreement. The Landlord did not provide any documentary evidence to support his testimony that the rent is \$600.00 per month. The Landlord and Tenant agree that the Tenant paid a security deposit in the amount of \$250.00. Section 19 of the Act permits a security deposit in the amount of half a month's rent. I find, on a balance of probabilities, that the testimony that the Tenant paid a security deposit of \$250.00 supports the Tenant's claim that the rent is \$500.00 per month.

Tenants Claims

Section 5 of the Act states Landlords and Tenants may not avoid or contract out of this Act or the regulations. Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33 of the Act states that, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I find that the Landlord cannot contract outside the Act and enter into a tenancy agreement to rent a unit "as is". The Landlord states the rental unit was rented "as is" but there is no written tenancy agreement to document any terms and conditions of the "as is" verbal agreement.

I find that the Tenant had a bathroom when he moved into the rental unit in May 2016. The Landlord gutted the bathroom and removed the toilet, sink, and bathtub, in June 2016, and has not taken further steps in four months to repair the bathroom. The Landlord testified he had initially planned to follow through with the repair of the bathroom but since the Tenant has not paid the rent he has not fixed the bathroom.

I find that the Landlords failure to provide the Tenant a bathroom has breached section 32 of the Act by failing to provide the Tenant a rental unit that complies with health, safety, and housing standards. I find that the repairs are urgent and necessary for the health or safety of the Tenant.

I order the Landlord to provide the Tenant with a bathroom suitable for use by the Tenant. The Landlord must install a toilet, sink, and bathtub/ shower in the rental unit and ensure the bathroom is completely functional by November 18, 2016. I order that the bathroom components be installed by a qualified tradesperson.

I find that the loss of use of the bathroom amounts to a reduction in the value of the tenancy. Due to the considerable amount of time that the Tenant has lived without a bathroom, and pursuant to section 65 of the Act, I am granting the Tenant compensation from the Landlord in the amount of \$15.00 each day starting October 31, 2016, until the repairs or installations are complete. The Tenant may deduct the amount from future rent payments.

If the parties cannot reach an agreement on a date that the repairs are complete and the amount of compensation owing to the Tenant, the Landlord may make further application for dispute resolution seeking an order from an Arbitrator that the repairs are completed.

With respect to the fridge, the Landlords failure to provide a written tenancy agreement as required under section 13 of the Act, has limited the Tenants ability to prove the terms and conditions of what the parties agreed to. The Landlord and Tenant have provided conflicting testimony on whether the Landlord is required to provide a fridge. As such, I find the burden of proof on this issue rests with the Landlord.

I find, on a balance of probabilities, most multi-family rental properties do provide fridges and stoves as part of their tenancies. I find that the Landlord has failed to provide any evidence, such as the tenancy agreement, to prove that the Tenant agreed that the tenancy did not include a fridge. I order the Landlord to provide the Tenant with a fridge that is functional by November 18, 2016.

With respect to the Tenant's claim for \$1,500.00, there is insufficient evidence from the Tenant that he overpaid any amount of rent to the Landlord. The testimony from the parties indicated that the money was allegedly paid to the Landlord by a different occupant living in a different unit within the rental building. As such, the Tenant's claim to recover \$1,500.00 is dismissed.

Conclusion

The Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 7, 2016 is set aside. The Landlord's Application for an order of possession and monetary order for unpaid rent is dismissed.

The Landlord is ordered to make emergency repairs to the rental unit and provide a fridge by November 18, 2016. The Tenant is granted compensation for loss of use of the rental unit in the amount of \$15.00 per day until the repairs are complete.

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: November 3, 2016

Residential Tenancy Branch