



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC

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 money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

At the outset of the hearing, the parties advised that the tenant had made the outstanding rent payment with five days of receiving the 10 Day Notice and as such the landlord was no longer seeking an order of possession.

Issues

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on February 1, 2017. The monthly rent as per the agreement was \$1050.00 per month. The parties renewed the lease effective September 1, 2017 and the rent increased to \$1100.00 per month.

The tenant is claiming loss in the amount of \$2100.00 which equates to the two months' rent paid for the months of July and August 2017. The tenant testified that for the period of June 23, 2017 to October 13, 2017 her rental unit has been uninhabitable as the result of a sewer back-up. She continued to pay the rent even though she has been

unable to reside in the unit as she received a Notice to End Tenancy for unpaid rent. The tenant testified that she has a 4 month old baby and a 14 year old child so living in a unit which was contaminated by human feces was not possible. The tenant got her insurance company to pay for a swab test of the rental unit. An e-mail from the environmental company performing the test indicates there was a very significant amount of coliforms which are an indicator of the presence of human feces. The environmental company advised the flooring in the unit needed to be fully cleaned and disinfected before the unit could be habitable. The tenant submitted the test results to the landlord as the landlord was insisting the rental unit was habitable. The tenant submits there was construction occurring daily in the rental unit. The tenant testified that her insurance paid her a living allowance of \$600.00 per week. The tenant testified her expenses such as rent, utilities and living expenses were much more than the living allowance provided by her insurance.

The landlord argues the tenant has not submitted any receipts as proof of any financial loss. The landlord argues the tenant's insurance provided her with a total payment of \$8600.00 over the period in question and this is more than adequate compensation. The landlord submitted an e-mail from the tenant's insurance company advising that they would seek to recover any rent abatement provided by the landlord from the tenant. The landlord argues the rental unit was still habitable and the tenant had her brother staying there throughout the restoration work.

The tenant replied her brother was only at the rental unit on certain days and weekends when restoration work was being performed but he did not reside there. The tenant submits that it should not be up to her insurance company to cover the landlord's loss of rent.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Although the landlord argued the rental unit was still habitable, the landlord did not present any evidence in support of this argument. Based upon the e-mail from the

environmental company that performed the swab tests, I find the rental unit was uninhabitable. I accept the tenant's testimony that the rental unit was not made habitable until October 13, 2017. The landlord's argument that the tenant did not produce any expense receipts is irrelevant as the tenant is only claiming reimbursement of her rent and not any additional expenses incurred. I find the tenant did not have use of the rental unit for the entire period in question and such the tenant cannot be expected to pay rent for this period. The fact that the tenant received a living allowance through her insurance company does not mean she should still be liable to pay rent to the landlord during a period when the rental unit was uninhabitable. Any potential overpayment by the tenant's insurance company is a separate matter between the tenant and her insurance.

I accept the tenant's claim for reimbursement of the rent paid for the months of July and August 2017 and grant the tenant a monetary order in the amount of \$2100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2100.00. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 14, 2017

Residential Tenancy Branch