



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPR MNR
Tenant: CNR, RP, RR, FF

Introduction

This hearing dealt with an application by both parties pursuant to the *Residential Tenancy Act* ("Act").

The landlords sought:

- an Order of Possession for unpaid rent pursuant to sections 46 and 55; and
- a Monetary Order for unpaid rent pursuant to section 67.

The tenants sought:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order for the landlord to make repairs to the unit, site or property pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord's agent (the landlord) and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord testified that the Landlord's Application for Dispute Resolution (Landlord's Application) and supporting evidence was served to the tenant by way of registered mail on September 22, 2017. The tenant confirmed they received the Landlord's Application

with supporting evidence. In accordance with sections 88 and 89 of the *Act*, I find the tenant was duly served with the Landlord's Application and supporting evidence.

The landlord acknowledged receiving the Tenant's Application for Dispute Resolution (Tenant's Application), which was served to the landlord by way of registered mail on September 16, 2017. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Tenants' Application.

The landlord acknowledged receipt of the tenant's evidence which was sent to him by way of registered mail on November 05, 2017. In accordance with section 88 of the *Act*, I find that landlord is duly served with the tenant's evidence.

The landlord entered into evidence a signed and witnessed Proof of Service document attesting to the fact that the 10 Day Notice was posted to the door of the rental unit on September 12, 2017. The tenant filed their Tenant's Application to dispute the 10 Day Notice on September 14, 2017. In accordance with section 88 of the *Act*, find the tenant was duly served with the 10 Day Notice on September 14, 2017.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the tenant entitled to an order for the landlord to make repairs to the unit, site or property?

Is the tenant entitled to an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord gave written evidence that this tenancy began on April 11, 2017, with a monthly rent of \$1,300.00 due on the 11th day of each month. The landlord testified that they continue to retain a security deposit in the amount of \$650.00. The tenancy agreement shows that furniture is included with the tenancy.

A copy of the signed 10 Day Notice, dated September 12, 2017, identifying \$1,300.00 in unpaid rent with an effective date of September 22, 2017, was included in the landlord's evidence.

The landlord also submitted into evidence:

- a copy of an agreement between the owner of the property(Owner) and the landlord transferring management of the rental unit from the Owner to the landlord;
- a copy of a letter, from the landlord to the tenant, dated August 23, 2017, advising the tenant that all future rent payments are to be made directly to the landlord and giving options for how the monthly rent can be paid;
- copies of e-mails between the tenant and the Owner from August 05, 2017, to September 09, 2017, about the removal of furniture from the rental unit and other tenancy issues; and
- a copy of a letter, from the landlord to the tenant, dated August 29, 2017, reminding the tenant that the September 2017 rent is now payable to the landlord as well as addressing other issues between the landlord and the tenant

The tenant submitted into evidence:

- copies of e-mails between the tenant and the Owner from July 08, 2017, to September 09, 2017, which discuss the furniture in the rental unit;
- copies of e-mails between the tenant and a representative of the landlord from October 16, 2017 to October 31, 2017;
- copies of e-transfer details from June 2017 to October 2017 showing the monthly rent being paid to the Owner, from the tenant, with the transfer completed prior to the day the rent is due on each occasion;
- a copy of a series of text messages regarding a new lease that the tenant will not sign;
- 21 pictures of assorted furniture, some in disrepair, and other items from the rental unit;
- a copy of an unsigned lease between the landlord and the tenant

The landlord testified that the tenant was not paying the monthly rent to them as per the August 23, 2017, letter given to the tenant and she was continuing to pay the Owner directly. The landlord submitted that the monthly rent has been accepted for September 2017, October 2017 and November 2017, for use and occupancy only.

The landlord stated that the rental unit was advertised as furnished and that the furniture is listed as included as part of the rent on the tenancy agreement signed by the tenant. The landlord testified that there was a discussion to remove some of the furniture but that communication broke down between the landlord and the tenant.

The tenant testified that they have always paid their monthly rent early as shown in the copies of the e-transfers and that they did not agree to change the way that they pay the monthly rent to the landlord. The tenant insisted that they pay the monthly rent in the same manner that they have been paying it since the beginning of the tenancy.

The tenant testified that the rental unit was fully furnished when the tenancy commenced and that there is a weird smell in the unit that the tenant believes is from some of the furniture that came with the tenancy. The tenant stated that this furniture consumes a third of the unit and some of it has been chewed up by dogs. The tenant submitted that the Owner removed a couple of items but not all of the items that the tenant requested to be removed. The tenant testified that when the new landlord took over management there was an agreement to move the furniture to the Owner's sister's house but that communication broke down and none of the furniture has been removed. The tenant requested a \$200.00 rent reduction until the furniture is removed.

The landlord admitted that the monthly rent was accepted by the owner, although not in the manner as requested by the letter given to the tenant, and agreed to withdraw the 10 Day Notice. The landlord gave an e-mail address for the tenant to make future rent payments by e-transfer to, which is listed above with the password for accepting the rent.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During this hearing, the parties reached an agreement to settle a portion of their dispute.

Both parties agreed to the following terms of a final and binding resolution of the tenant's application in relation to the cancellation of the landlord's 10 Day notice and that they did so of their own free volition and without any element of coercion:

1. The tenant agreed to pay the monthly rent by e-transfer to the e-mail address and with the password as listed on the title page of this decision.
2. The landlord agreed to withdraw the 10 Day Notice dated September 12, 2017
3. Both parties agreed that these particulars comprise the full settlement of all aspects of the Landlord's Application and the Tenant's Application arising out of the 10 Day Notice issued on September 12, 2017.

Although the two parties were able to reach a settlement concerning the 10 Day Notice, they were not able to come to an agreement in relation to the Tenant's Application to have the landlord make repairs to the unit site or property. The tenant bears the burden of proof to establish that repairs are needed.

I find that the tenant has not provided any evidence of repairs that need to be made to the rental unit. I find that the tenant has provided evidence to support their request to have furniture removed from the rental unit that the tenant does not want anymore. I find that the furnishings were included as a part of the tenancy agreement the tenant signed at the beginning of the tenancy.

I find that the tenant confirmed their acceptance of this furniture as shown in the e-mail with the Owner on August 07, 2017, which was provided in the landlord's evidence where the tenant states: "The unit was not listed furnished however when I explained my situation your dad offered to leave it here which at the time helped us both."

I find that that there is no condition inspection report submitted in evidence which establishes the condition of the rental unit or the furniture in the rental unit at the beginning of the tenancy, and that the condition has changed since the beginning of the tenancy resulting in the need for repairs.

For the above reasons, I dismiss the tenant's request to have the landlord make repairs to the unit.

The landlord and the tenant were also not able to reach a settlement on whether the tenant is entitled to an order to reduce the rent for services or facilities agreed upon but not provided. The tenant bears the burden of proof to establish that they are entitled to a rent reduction.

Section 65 of the *Act* (f) establishes that the director may order that past or future rent be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

Section 1 of the *Act* defines a service or facility as:

(a) appliances and furnishings; (b) utilities and related services; (c) cleaning and maintenance services; (d) parking spaces and related facilities; (e) cablevision facilities; (f) laundry facilities; (g) storage facilities; (h) elevator; (i) common recreational facilities; (j) intercom systems; (k) garbage facilities and related services; (l) heating facilities or services; (m) housekeeping services;

I find that the landlord has provided the furnishings that were included as part of the tenancy agreement, which the tenant does not want anymore. I further find that the tenant accepted these items at the beginning of the tenancy. Although the tenant might not want these items in their rental unit any longer, the landlord has provided the services and facilities that were agreed upon.

I find that the tenant has failed to provide sufficient evidence that they are entitled to a rent reduction. For the above reasons, I dismiss the portion of the Tenant's Application concerning a request to reduce the rent.

As the tenant has been partially successful in this application, in having the 10 Day Notice withdrawn, I allow them to recover half of the filing fee from the landlord.

Although I have dismissed the tenant's request for repairs and to reduce rent, and I have not made any finding in regards to the condition of the furnishings included with the unit, I note that if the furniture provided by the landlord has a foul smell as the tenant claims it could affect the tenant's quiet enjoyment of the unit which is protected under section 28 of the *Act*.

Conclusion

The 10 Day Notice of September 12, 2017 is withdrawn and is of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

The tenant and the landlord have agreed upon an acceptable method of payment for the monthly rent, as outlined in the terms of their settlement, using the e-mail and password on the title page for the rent to be e-transferred on or before the day the monthly rent is due as per the tenancy agreement.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlords for a future rent payment in the amount of \$50.00, one time only, to recover half of the filing fee for this application.

The portion of the Tenant's Application, requesting repairs to be made and for a reduction in rent, are dismissed 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: November 24, 2017

Residential Tenancy Branch