



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

Both parties and a witness attended the hearing and gave sworn testimony. The landlord stated the 10 Day Notice to End Tenancy dated October 17, 2017 to be effective October 27, was served by registered mail. The tenant stated he filed this Application to Dispute the Notice on October 18, 2017 by registered mail and the landlord acknowledged receipt. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) For compensation for repairs they did; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord has not done necessary repair and maintenance contrary to sections 32 and 33 and if so, is the tenant entitled to compensation or a rent rebate and to recover his filing fee for this application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 1, 2016, it is now a month to month tenancy, rent is \$1700 a month plus 50% utilities. A security deposit of \$850 and a pet damage deposit of \$250 were paid in August 2016. The landlord served the 10 Day Notice to End Tenancy stating \$3900 in rent was owed. In the hearing the landlord explained that rent owed for August, September and October 2017. He said this was based on rent of \$1300 a month for each month as there was an agreement to reduce rent by \$400 a month from June to October 2017.

The parties explained in the hearing that the rent was paid in full for the first two months of the tenancy, then it was discovered the secondary suite was not legal and the tenant offered to renovate it to a legal suite. In consideration, the landlord waived \$200 outstanding rent from December 2016 and all of the rent for January and February 2017. However, the parties renegotiated and rent was waived for March, April and May 2017. From June until October

2017, rent was to be \$1300 a month and then go to \$1700 as the renovation was completed. The landlord said they had scheduled a hearing on February 8, 2018 regarding rent owing and their evidence was submitted.

The tenant said he gave a bill for \$3000 to the landlord but he left the country then and did not pay; he also owes \$1300. He complains that people were coming late at night and he was refused rent receipts for tax reasons. The landlord denies this and said he gave email receipts for all payments of rent which were only made for a few months but the tenant has not paid rent for months so did not get receipts. The tenant said they were freezing in the lower suite as the furnace is controlled from upstairs. The landlord said he gave the tenant heaters but he did not install them. The tenant said the electrician's quote was too expensive and the landlord wanted more quotes. When queried concerning documentary evidence, the tenant said all was negotiated orally and in a friendly manner. He said he had witnesses but did not arrange to have them attend the hearing and he provided no witness statements in evidence. He said he had not given the landlord written notification that the furnace needed work or they needed to have the electric heaters installed as he did not think the tenancy would go forward. The tenant said he wanted to end the tenancy and the parties tried to negotiate an effective date for the Order of Possession but were unable to agree.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Order of Possession:

Section 26 of the Act provides a tenant must pay rent on time, whether or not the landlord fulfills their obligations under the Act. I find the tenant did not pay rent and was duly served a 10 Day Notice to End Tenancy. Although he claims they paid rent and utilities, I find insufficient evidence to support their claim. I find the landlord's evidence credible that rent was not paid since August 2017 and to date. I find the landlord's filed evidence supports that rent is owed as it clearly sets out the amounts paid, rents waived and reductions allowed and rent owed to date. I dismiss the application of the tenant to set aside and cancel the Notice to End Tenancy.

Section 55 of the Act provides in this situation, the landlord is entitled to an Order of Possession. I find the landlord entitled to an Order of Possession effective February 1, 2018.

Monetary Claims:

Although the tenant claimed he was owed money by the landlord, I find he provided insufficient evidence to support his claims. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find insufficient evidence provided by the tenant that the landlord violated the Act or tenancy agreement. The landlord said he was compensated for work he did by waiver of rent which the tenant acknowledged he received. Although he claims a rent rebate for lack of heat, I find there was a furnace in the home and the landlord bought electric heaters. I find insufficient evidence that the tenant notified the landlord in writing of the need to fix the furnace or provide other heat. I find insufficient evidence the tenant followed the procedure outlined in section 33 of the Act and requested in writing emergency repairs or other repairs. I also find insufficient evidence that the landlord is illegally entering his suite. In conclusion, I find the tenant has provided insufficient evidence to support any of his claims so I dismiss this portion of his application.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. I find him not entitled to recover filing fees due to his lack of success. I find the landlord entitled to an Order of Possession effective February 1, 2018.

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 10, 2018

Residential Tenancy Branch