



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRT, MNDCT, ERP, RR

Introduction

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act").

The landlord seeks:

- an order of possession for unpaid rent pursuant to section 55.

The tenant seeks:

- a monetary award for damages and loss pursuant to section 67;
- an order that the landlord make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord represented himself.

As both parties were present I confirmed service of documents. The tenant confirmed receipt of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent and evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The landlord said that there was additional evidence uploaded to the Branch but not yet served on the tenant. The parties agreed that the evidence not served, consists entirely of documents that were already in the tenant's possession. As the tenant consented to its inclusion and I find there is no prejudice to the parties by its consideration, I find the landlord's evidence was served sufficiently in accordance with section 71(2)(c). I find that the parties were duly served with the remaining materials in accordance with sections 88 and 89 of the *Act*.

Initially, I was scheduled to hear only the tenant's application today. The landlord's application was originally scheduled to be heard by me on February 8, 2018. The landlord requested that I bring the matters together so that both could be heard at once. The tenant testified that she had received the landlord's application for dispute resolution. Pursuant to 2.10 of the Rules of Procedure, as I find that both applications pertain to the same residential property, involve the same parties, and similar evidentiary matters would be considered for each application I ordered that the matters be brought together and heard at once.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?
 Is the tenant entitled to a monetary award as claimed?
 Should the landlord be ordered to make repairs to the rental unit?
 Is the tenant entitled to reduce the rent for this tenancy?

Background and Evidence

The parties agreed on the following evidence. This tenancy began on September 6, 2017. There is no written tenancy agreement. The monthly rent is \$600.00 payable on the first of the month. A security deposit of \$300.00 was paid and is held by the landlord.

The tenant paid \$12.85 for rent in November, 2017 deducting \$587.15 for various repairs and work she performed on the rental unit. The property manager KD was hired in November, 2017. As the landlord's representative he issued a 10 Day Notice to End Tenancy for Unpaid Rent on November 16, 2017. The tenant paid the arrears amount together with the full rent for December, 2017 on December 1, 2017. The landlord accepted the payment for use and occupancy only and issued a letter to the tenant stating such on December 2, 2017.

The tenant testified that when she first took possession of the property in September, 2017 it required considerable cleaning and repairs. The tenant said that she had no other accommodations and began occupying the rental unit despite its unsanitary and unsafe state. The tenant testified that she entered into an oral agreement with the landlord that she would perform work, consisting of cleaning, painting, carpet cleaning, general repairs and yard work at a cost of \$15.00 per hour. The tenant also said that it was agreed that the landlord would reimburse her for the out of pocket expenses for hardware related to the work done on the rental unit.

Item	Amount
Out of Pocket Expenses	\$287.15
Labor (256 hours @ \$15.00/hour)	\$3,840.00
Storage Fees	\$357.50
Laundry Costs (Sept-Jan)	\$100.00
Loss of Enjoyment	\$1,000.00
Less January Rent Withheld	-\$600.00
TOTAL	\$4,984.65

The tenant submitted into written evidence receipts for her out of pocket expenses totalling \$287.15.

The tenant testified that the cleaning and work occurred throughout the first 2 months of the tenancy and took 256 total hours.

The tenant said that she incurred costs such as storage fees for her belongings and having to do laundry at a laundromat outside of the rental unit.

The tenant also makes a claim for the general stress that she said the process of dealing with the landlord has caused her.

The tenant said that throughout the repairs and cleaning she has been in contact with the landlord, keeping him updated and providing him with periodic invoices. She said that the landlord has not made provided her with any payment. The tenant testified that the landlord assisted her during the cleaning and repairs by offering her rides to the store to purchase supplies and providing her with a new carpet cleaning machine.

The tenant testified she has deducted \$600.00 from the rent for the month of January for the amount she feels is owed. The tenant said that the rental unit still requires work for the presence of mold, and holes in the shower walls.

The landlord testified that there was never an agreement with the tenant to pay her for repairs and cleaning. The landlord disputed the tenant's testimony generally. The landlord initially disputed that he was aware that the tenant was doing work in the rental unit but later testified that he was aware of the cleaning and renovations but there was no agreement he would pay her for the work. The landlord confirmed that he had purchased a carpet cleaner which was used by the tenant.

The property manager testified that he was hired by the landlord in November, 2017 and has no first-hand knowledge of an agreement between the landlord and tenant. The property manager confirmed that as far as he is aware there is no written agreement between the parties or any written correspondence confirming any agreement. The property manager said that the testimonies of both the landlord and tenant are consistent with what they have informed him in the past.

Analysis

Given the contradictory testimony and positions of the parties, I must first turn to a determination of credibility. The parties disagree on whether there was a verbal agreement that the tenant could perform repairs to the rental unit at the landlord's expense. The landlord's property manager testified that he has no knowledge of any agreement the parties may have entered prior to his being retained and that there appears to be no documentary evidence in support of either position.

I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find the evidence presented by the tenant more credible than that of the landlord. I find that the landlord's testimony was inconsistent. At first disputing that he knew of the repairs and cleaning and later conceding that he was aware of them though he did not agree to pay. Several times during the hearing, the landlord changed his evidence from a blanket dispute of the tenant's statement to accepting some portions. The landlord did not answer questions put to him. The most telling example was when he did not answer the tenant's question as to why he purchased and provided a new carpet cleaner if there was no agreement that she perform cleaning and repairs. I find that the number of inconsistencies in the landlord's testimony negatively impacts his reliability and credibility as a witness.

I find the tenant provided consistent and clear evidence. The tenant was honest about the limitations of her recollection and in my view did not exaggerate or re-create evidence that she did not specifically recall. The tenant reasonably relied upon the documentary evidence to support her testimony.

Furthermore, I find the tenant's behavior consistent with her testimony. I do not find it reasonable that a tenant would undertake over 200 hours of work to clean and repair a rental unit instead of simply reporting deficiencies to the landlord if there is no agreement in place. I do not consider it reasonable behavior that a party would record their hours of work if it was not required. The tenant acted in a manner consistent with an individual who expects to be paid for her hourly work in accordance with an agreement. Where there is a discrepancy I find that I prefer the evidence of the tenant to that of the landlord.

I find it appropriate to make a general comment about the evidence provided by the landlord's property manager. I find the property manager to be credible and reliable. He testified in a forthright manner and with courtesy, speaking well of his reliability as a witness. He gave evidence of his experiences and qualifications as a property manager. He was honest about the limitations of his knowledge of any agreement entered by the parties prior to his being hired by the landlord.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Residential Tenancy Procedure Rule of Procedure 6.6 provides that the onus is on the person making the claim to prove their claim on a balance of probabilities. Based on the evidence of the parties, I find that I am satisfied that there was an agreement between the landlord and tenant whereby the tenant would perform work on the rental unit for the landlord. I accept the tenant's evidence that the agreement provided that she would be compensated at a rate of \$15.00 per hour for her labour and that the landlord would repay her for out-of-pocket expense related to the cleaning and renovations.

I accept the tenant's testimony and documentary evidence that she has incurred out-of-pocket expenses in the amount of \$287.15 and that she has worked a total of 256 hours through September and October, 2017. I accept the parties' testimony that the landlord has not paid the tenant any amount for the work performed or disbursements purchased.

I find that there is insufficient evidence in support of the tenant's claim for the cost of storage and laundry. I find that there is insufficient evidence to show that these are costs that would not otherwise have been borne but for a breach by the landlord. As stated above, the onus is on the applicant to show that these are losses that arise directly from the action or inaction of the landlord. I find that there is insufficient evidence to reach that conclusion. Consequently, I dismiss this portion of the tenant's claim.

The tenant also makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

- 28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that “A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises.”

Section 32 (1) 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.

Residential Tenancy Act Regulations Schedule 8, in relevant part, states:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

In this matter, I find the above legislation effectively states a landlord is responsible to make repairs when a request for repairs is to ensure reasonable aesthetics, reasonable functioning or lawful compliance with health, safety and housing standards.

I find that the tenant has not provided sufficient evidence to demonstrate that there has been an ongoing substantial interference giving rise to an award for breach of quiet enjoyment. I find that the landlord effectively addressed their duty to have repairs made to the rental unit by entering into an enforceable agreement with the tenant to have cleaning and repairs done. I accept the tenant's evidence that the parties entered into this agreement at the outset of the tenancy and that the landlord assisted the tenant by providing a carpet cleaner and rides to facilitate the work. Under the circumstances, I find that the landlord has not breached the tenant's right to quiet enjoyment giving rise to a monetary claim. Consequently, I dismiss this portion of the tenant's application.

I find it appropriate to issue a one-time monetary award in the tenant's favour in the amount of \$1,200.00 for loss of quiet enjoyment, the approximate equivalent of 30% of the monthly rent for a period of 10 months from when the repairs were ordered completed to the date of the hearing.

Based on the foregoing I find that the tenant is entitled to a monetary award in the amount of \$4,127.15 for the work done and out-of-pocket expenses.

I accept the tenant's evidence that pursuant to the agreement with the landlord the tenant was entitled to deduct the amount owed her for her labour and disbursements from the monthly rent. Accordingly, I find that the tenant was not obligated to pay the \$600.00 rent on November 1, 2017 and was permitted, under the terms of the agreement to deduct her labour costs. That she chose to only deduct the out-of-pocket

expenses and \$300.00 for labour is immaterial. I find the tenant was entitled to deduct the full amount of the monthly rent under the term of the verbal agreement with the landlord. Therefore, I find that no amount of rent was owed, as at November 16, 2017 when the landlord issued the 10 Day Notice. As I find that there was no payment arrears, I find the 10 Day Notice of November 16, 2017 to be of no force or effect. I dismiss the landlord's application for an Order of Possession for unpaid rent.

The tenant requests additional repairs be performed and to reduce her rent for repairs, services or facilities agreed upon but not provided. The tenant testified that while she resides in the rental unit, work needs to be done to address the presence of mold and the faulty doors. The property manager testified that based on his inspection of the rental unit he does not believe that any work is required. In this instance I find that the testimony of the landlord's property manager to have more weight than the tenant. The property manager provided his professional opinion based on his experience and knowledge. I accept the property manager's testimony that the rental unit is in adequate condition requiring no additional repairs at this time. I find that the images submitted into evidence by the tenant in support of her position to show some cosmetic issues but no major deficiencies that contradicts the property manager's testimony. Accordingly, I dismiss this portion of the tenant's application.

Conclusion

The landlord's application is dismissed without leave to reapply. This tenancy will continue until ended in accordance with the *Act*.

The tenant is issued a one-time monetary award in the amount of \$4,127.15. In order to implement the monetary award the tenant may credit her account and reduce the amount of the monthly rental payments to the landlord by this amount until the amount has been deducted in full.

Should that not be possible or should this tenancy end before the tenant has deducted the full amount of the monetary award from future rent, I issue a monetary Order in the tenant's favour in that amount. The landlord must be served with this Order as soon as possible. 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.

The balance of the tenant's application is 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: January 22, 2018

Residential Tenancy Branch