



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED DECISION

Dispute Codes

CNR ERP LAT RP
FFL MNRL-S OPR

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlords. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlords make emergency repairs for health or safety reasons; an order permitting the tenant to change the locks to the rental unit; and for an order that the landlords make repairs to the unit, site or property. The landlords have applied for an Order of Possession and a monetary order for unpaid rent or utilities; an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The tenant attended the hearing with a Legal Advocate. One of the landlords attended the hearing and was assisted by a translator who was affirmed to well and truly interpret the proceedings from the English language to the landlord's native language and from the landlord's native language to the English language to the best of the translator's ability. The landlords were also represented at the hearing by an Agent. The tenant and the landlord each gave affirmed testimony and the parties' representatives were given the opportunity to question the parties and give closing submissions.

Issue(s) to be Decided

- Has the landlord established that either of the 10 Day Notices to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that the landlords should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the landlords should be ordered to make repairs to the unit, site or property?
- Should the tenant be permitted to change the locks to the rental unit?

Background and Evidence

The parties agree that a hearing was held before the director, Residential Tenancy Branch on September 20, 2017 and a written Decision was provided to the parties.

The landlord testified that the landlords purchased the rental property in July, 2017 and the tenant was already residing in the rental unit. Rent in the amount of \$550.00 per month is payable on the 1st day of each month. The landlords received a security deposit in the amount of \$250.00 as well as a pet damage deposit in the amount of \$250.00 on behalf of the tenant when they purchased the rental property, both of which are still held in trust by the landlords. The rental unit is one of 2 basement suites and the landlords reside in the upper level of the rental home. The landlord testified that there is a written tenancy agreement, but none has been provided as evidence for this hearing.

The landlord further testified that the tenant paid the rental arrears after the hearing on September 20, 2017 and paid rent for October, 2017, but failed to pay rent when it was due in November. On December 2, 2017 the landlords served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is not dated but contains an effective date of vacancy of December 25, 2017 for unpaid rent in the amount of \$1,100.00 that was due on November 1, 2017.

The landlords served another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 3, 2018 by posting it to the door of the rental unit, and a copy has been provided for this hearing. It is dated January 3, 2018 and contains an effective date of vacancy of January 13, 2018 for unpaid rent in the amount of \$1,650.00 that was due on December 1, 2017.

Rent is paid in cash and the landlord always gives receipts. The tenant has not paid any rent since the notices were issued, and has not attempted to pay rent in November or since. The landlords have left messages for the tenant but the tenant has not replied and is currently in arrears of rent the sum of \$2,200.00 for November and December, 2017 and January and February, 2018.

With respect to the tenant's application regarding repairs and emergency repairs, the landlord testified that the entire home is heated with a boiler system and the heat works fine. There is one hot water tank shared by the 3 units in the home, and it's also working. The toilet was broken causing a leak into the rental unit, however the landlord's husband fixed on July 18, 2017. The landlord knows nothing about the fridge not working or any problem with the door lock because the tenant won't allow the landlords to enter, but the landlord agrees to repair the lock immediately and will have a repair person fix the fridge. The landlord also put a bulb in the outside light near the entrance of the rental unit last Saturday or Sunday.

When asked how the landlord can testify that repairs were made to the hot water tank in July when the landlord was ordered to do so at the September 20, 2017 hearing, the landlord had no response.

The landlord acknowledged receiving letters from the tenant requesting repairs be made on July 20, July 22, October 20 and October 27, 2017, and testified that on each occasion she knocked on the tenant's door but the tenant wouldn't open the door.

The landlord testified that she wants the tenant to move out because she causes disturbances.

The tenant testified that the same issues have continued since the September 20, 2017 hearing. None of the repairs have been made. There is still no sensory bulb at the outside entrance as of this morning and it's very dark there. The fridge is still broken and was brought to the attention of the previous landlord and these landlords. Every letter and request for receipts and repairs have been ignored, and the landlord said the lock would be fixed when the tenant moves out.

The tenant further testified that at the September 20, 2017 hearing the landlord testified that the landlords want cash only and do not want to issue receipts. The Arbitrator stated that the tenant is permitted to withhold rent until repairs are made. On October 23, 2017 the tenant gave the landlord all rental arrears in cash and the landlord gave a receipt. The tenant knocked on the landlord's door intending to pay November's rent but no one answered the door. The tenant saw the landlord outside, intended to pay November's rent and asked for a receipt but the landlord refused so the tenant walked away. The tenant also knocked on the landlord's door on December 1, 2017 but there was no response.

The tenant does not have a chequing account so cannot give the landlords a cheque, and is on a fixed income and does not have the means to purchase a money order or bank draft. The landlords need only give a form to a government Ministry and the tenant's rent would be paid prior to its due date each month, but the landlords want cash.

Analysis

The *Residential Tenancy Act* requires a tenant to pay rent even if the landlord fails to comply with the *Act* or the tenancy agreement unless otherwise ordered. The law also requires a landlord to give receipts for any payments made in cash. In this case, the landlord does not dispute that the landlords want cash only and submit they are not required to sign any government Ministry form. The Decision from the September 20, 2017 hearing states:

"I determined the landlord has failed to establish sufficient grounds to end the tenancy based on the 10 day Notice to End Tenancy for the following reasons:

- I find that the tenant has attempted to pay the rent on at least 5 occasions but the landlord has refused to accept payment.
- The Residential Tenancy Act requires that the landlord gave the tenant a receipt if the rent is paid by cash. The landlord refused to provide a receipt. I determined the tenant is not obliged to pay the rent until the landlord is prepared to provide a receipt. To rule otherwise would deny the tenant the protection of the Act.

- I determined the tenant has sufficiently tendered the rent. While the rent money remains owing, the tenant is not required to pay the rent for the previous month until the landlord requests payment and provides a receipt.
- I determine the landlord is not entitled to an Order of Possession for non-payment of rent where the tenant has tendered rent payment but the landlord refuses to provide a rent receipt and refuses to accept payment.

“Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I ordered that the 2 month Notice to End Tenancy and the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.”

The Decision does not provide the tenant with any right to withhold rent for the landlord's failure to make repairs, but states that the tenant “is not obliged to pay the rent until the landlord is prepared to provide a receipt.” The tenant testified that she attempted to pay rent in November but the landlord refused to give a receipt so the tenant walked away. The tenant also testified that in both November and December the tenant knocked on the landlords' door but there was no response. The landlord disputes that testimony and testified that the tenant has made no attempt to pay rent for November, 2017 or since, and that the landlord always issues receipts. However, given the finding of the Arbitrator from the September 20, 2017 hearing that the tenant attempted to pay rent on 5 occasions and that the landlords refused to provide receipts, I prefer the testimony of the tenant, that the landlords want cash only and do not want to comply with the *Residential Tenancy Act* by providing receipts to the tenant for all payments made in cash.

I have reviewed both of the notices to end the tenancy for unpaid rent, and I find that both are in the approved form. However, the first one is not dated, which is a requirement of the *Act*, and therefore I cancel it. With respect to the second notice, it is dated January 3, 2018 and states that the tenant failed to pay rent in the amount of \$1,650.00 that was due on December 1, 2017, but according to the testimony of the parties, the tenant had paid rent for October, and owed for November and December, 2017, which totals \$1,100.00, not \$1,650.00.

The landlord also testified that the landlords want the tenant to move out because the tenant is causing disturbances, but there is no supporting evidence of that, and the landlord has not issued a notice to end the tenancy for that.

I also consider that the September 20, 2017 hearing dealt not only with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but also a Two Month Notice to End Tenancy for Landlord's Use of Property which was also cancelled. The landlord testified at that hearing that a close family member would be occupying the rental unit but the Arbitrator found that the landlords failed to establish good faith intent to use the rental unit for that purpose. I find that the landlords continue to breach the law by continually attempting to remove the tenant from the rental unit by whatever means they can without complying with the *Act*, and perhaps that is the real reason the landlords

want the tenant to move out. The landlords don't want a paper trail for rent collected, and don't want to make the repairs to the rental unit.

The fact remains that the Arbitrator at the September 20, 2017 hearing ordered that the tenant is not required to pay rent in cash if the landlord doesn't issue a receipt, and far be it from me to change that order. The landlord's Agent submits that the landlords are not required to complete a form so that rent is paid directly to the landlord by a government Ministry, and I agree. The *Act* does not specify how rent is to be paid and the tenant can pay it by any means that are available to her, but if paid in cash, the landlord must issue a receipt. I find that the landlord failed to do so for November, 2017 rent after the tenant offered cash to the landlord, and therefore, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is cancelled and the tenancy continues. I order the landlords to provide the tenant with receipts for any payments made in cash.

The *Act* defines emergency repairs as:

- 33 (1) In this section, "**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.

The tenant seeks an order that the landlord repair the lock to the rental unit and heating, which I find fall within the definition of emergency repairs. However, the tenant has also applied for an order permitting the tenant to change the lock. The tenant testified that none of the repairs have been completed, which is disputed by the landlord who testified that the heat is on a boiler system for the entire rental building and works fine. It may work fine in the landlords' suite, but I am not satisfied that it works fine in the tenant's suite, and there is no evidence before me to satisfy me that the landlords have even investigated the problem.

A landlord is required to make emergency repairs, and if the landlord fails to do so, the tenant may have the repair done and provide the landlord with a receipt and then deduct the amount from rent payable.

- 33 (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and

telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The tenant has also applied for repairs to the fridge, hot water, leak in the ceiling and the outside light. The landlord testified that her husband fixed a toilet so the ceiling shouldn't be leaking, and there's nothing wrong with the hot water tank, however again, I have no evidence before me that the landlord ever investigated the ceiling or the hot water tank in the rental unit. The landlord also testified that the tenant never answers the door. However, a landlord may not enter a rental unit for any purpose unless an emergency exists and entry is necessary for the health or safety of anyone or for the preservation of the property, or the tenant allows the entry at the time. Other than that, a

landlord must give the tenant notice in writing of the date and time and purpose for entering, and the tenant must receive that notice no less than 24 hours prior to entering. If the notice is posted to the door of the rental unit or other conspicuous place, the tenant is deemed to have received the notice 3 days after posting it.

In the circumstances, I am satisfied that the landlords have failed to comply with the *Act* and I order the landlords to retain the services of professionals to investigate and repair the hot water for the rental unit, the heating system for the rental unit, the fridge, and the leak in the kitchen ceiling. If all repairs are not completed by February 28, 2018 the tenant will be at liberty to apply for monetary compensation for the landlords' failure to comply with the *Residential Tenancy Act* and this order. I also order the landlords to repair or replace the bulb for the outside light immediately, and ensure it is operational.

I also order that the landlords replace the lock to the rental unit forthwith, and if the landlords fail to do so by February 15, 2018 the tenant is permitted to do so and deduct the amount from rent due to the landlords. I further order the landlords to repair the ceiling in the bedroom and repair or replace the door frame and door by March 15, 2018.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety without leave to reapply.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which contains an effective date of vacancy of December 25, 2017 is hereby cancelled.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 3, 2018 is hereby cancelled and the tenancy continues.

I hereby order the landlords to give a receipt for any payments made by the tenant in cash.

I further order the landlords to retain the services of professional personnel to investigate and repair the hot water in the rental unit, the heating system for the rental unit, the fridge, and the leak in the kitchen ceiling. If all repairs are not completed by February 28, 2018 the tenant will be at liberty to apply for monetary compensation for the landlords' failure to comply with the *Residential Tenancy Act* and this order.

I further order the landlords to repair or replace the bulb for the outside light immediately and ensure the sensory light is operational.

I further order that the landlords replace the lock to the rental unit forthwith, and if the landlords fail to do so by February 15, 2018 the tenant is permitted to do so and deduct the amount from rent due to the landlords.

I further order the landlords to repair the bedroom ceiling and repair or replace the door frame and the door by March 15, 2018.

This order is final and binding and may be enforced.

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: February 07, 2018

Amended February 23, 2018

Residential Tenancy Branch