



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR ERP FF

Introduction

This hearing was convened in response to an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Cancel a Notice to End for unpaid rent - Section 46
2. Order the landlord to make emergency repairs - Section 33
3. An Order to recover the filing fee for this application - Section 72.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Should the landlord be Ordered to make emergency repairs?

Background and Evidence

The tenancy began in April 2014. The parties acknowledged at the outset of the hearing they have an on-again/off-again disputatious relationship.

The parties agreed that rent has always been paid on the 1st of the month. The disputed amount for the payable monthly rent is \$950.00, according to the landlord, and \$850.00 according to the tenant. There is no written tenancy agreement however the parties agreed they, in the least, had an oral tenancy agreement. As far as the rent is concerned the tenant claims the agreed rent arrangement was \$850.00 but it would be \$950.00 if paid after the noon hour on the 1st of each month. The landlord claims the

agreed rent arrangement was \$950.00 but a reduced amount of \$850.00 was payable if received before the noon hour on the 1st of each month, as an incentive. The parties agreed that at the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$475.00, which the landlord testified was half of the agreed rent of \$950.00. The landlord claims the tenant failed to pay rent in the months of January, February and March 2018 before noon on the 1st of each of those months and on March 03, 2018 the landlord personally served the tenant with a Notice to End tenancy for non-payment of rent representing \$100.00 for each of the 3 months for a total sum of \$300.00 claimed owed.

The tenant further claims that they have had a plumbing-related water leak near or at a faucet for several years, about which they have repeatedly informed the landlord but that it has not been resolved. The landlord claims they have repeatedly inspected the alleged affected area of concern when informed and have not found any evidence of a water intrusion or any accumulation of water therefore have concluded a water leak does not exist.

Analysis

Based on the available evidence provided by the tenant as well as the parties' testimony I find there is insufficient evidence in respect to a claimed leak from the plumbing system. As applicant, the tenant was required to provide evidence, on a balance of probabilities, of their claims; however in respect to this portion of their application they did not. As a result, **I dismiss** the tenant's application for emergency repairs, *with leave to reapply **solely** if they can provide proof of a need for emergency repairs.*

In the absence of a written tenancy agreement I accept the parties' evidence they originally verbally contracted that in the least the amount of rent payable by noon on the 1st of each month as \$850.00, so as to satisfy the rent amount in exchange for the tenancy. In respect to the agreed amount for the monthly rent I accept the parties' mutual evidence that a security deposit of \$475.00 was paid and that this represents half of \$950.00. As a result, on a balance of probabilities I find *I prefer* the landlord's version that at the outset of the tenancy the rent of the rental unit was agreed to be \$950.00 and that \$850.00 was the amount required to satisfy the rent if paid before noon on the 1st of each month. In this matter, the burden of proof lay with the landlord to prove they issued a valid 10 Day Notice to End tenancy for unpaid rent. I find that neither party provided evidence as to what time the rent was paid on the rent due date for the months of January, February and March 2018. As a result, I find it cannot be sufficiently established the landlord's Notice to End is valid to end the tenancy.

Therefore I am **cancelling** the Notice to End rendering it null and of no effect with the further result the tenancy continues.

In the absence of a written tenancy agreement and so as to perfect my findings and clarify the matter of the payable rent moving forward, from the date of this Decision;

I Order that the agreed payable monthly rent is \$950.00 **due in advance on the 1st of each month**; however, the amount of **\$850.00 paid or made available to the landlord before the 1st of each month** will fully satisfy the payable monthly rent.

As the tenant was in part successful in their application they are granted recovery of their filing fee from the landlord in the amount of \$100.00.

Conclusion

The tenant's application in part is granted and the balance dismissed, with conditional leave to reapply.

I Order that the tenant may deduct **\$100.00** from a future rent in satisfaction of the filing fee amount granted herein.

This Decision is final and binding.

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: May 24, 2018

Residential Tenancy Branch