



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing and evidence. In accordance with sections 88 and 89 of the Act, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed that she was served with the 10 Day Notice on June 2, 2018, which was posted on her door. In accordance with section 88 of the Act, I find that the tenant was deemed served with the 10 Day Notice on June 5, 2018.

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 for unpaid rent?

Background and Evidence

This month-to-month tenancy began on February 1, 2003, with monthly rent currently set at \$930.00, payable on the first of the month. The landlord collected a security deposit of \$382.50, and still holds that deposit. The tenant still resides at the rental unit.

The tenant was served the 10 Day Notice by the landlord for paying only a portion of the June 2018 rent. The tenant does not dispute the fact that the rent was not paid as she held back \$255.00 of the rent for an emergency repair she had to complete on her own.

The tenant testified that on May 23, 2018 her toilet was overflowing, and she immediately sent two text messages, as well as called the landlord at his emergency number three times without any response from the landlord. The tenant testified that she left voicemails, as well as sent emails to the landlord. The tenant testified that she had shut the water off as the "water was pouring out of the tank". After no response from the landlord the tenant called a plumber, who attended the next day on May 24 2018. The plumber was able to repair the toilet by installing a new fill valve and replacing the wax sealant. The tenant paid the invoice, and after being denied the reimbursement by the landlord, deducted the amount from the June 2018 rent payment.

The tenant, in her evidence, provided the plumbing invoice, phone call logs, emails, and other documentary evidence to support her application.

The landlord did not dispute the fact that the tenant sent these text messages, or made the phone calls. The landlord testified that the tenant was not entitled to a rent reduction for an emergency repair, as this situation did not constitute an emergency. The landlord testified that the number the tenant contacted was the correct number, but that the landlord had dispatched their own plumber, who attended on Thursday, May 25, 2018. The landlord testified that the plumber had tried to reach the tenant through their intercom, but there was no answer. The tenant testified that they were home all day, and did not hear from the plumber. The landlord testified in the hearing that the tenant had access to an alternate toilet in the laundry room, and that a site contact was available to the contact.

Analysis

Section 26(1) of the *Act* requires the tenant to pay rent when due under the tenancy agreement, "whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent".

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

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...
 - (v) the electrical systems....

(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...

(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)...

(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.

Under Section 33 (1)(c) of the *Act*, the tenant's overflowing toilet may be considered an emergency repair. Sections 33(5)(b) and 33(6)(b) require the tenant to provide a written account of the emergency repairs accompanied by a receipt for the amount claimed. The tenant provided supporting evidence to demonstrate that she had complied with these sections. Accordingly, I find that the tenant had met all the conditions required to request a rent reduction for the emergency repair. I find that the tenant had demonstrated that she had the right to deduct rent for the emergency repair, and therefore I am cancelling the 10 Day Notice issued to her for withholding the \$255.00 from her June 2018 rent.

The tenant's application to cancel the 10 Day Notice, dated June 2, 2018, is allowed, and the 10 Day Notice is of no force or effect. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

Conclusion

I allow the tenant's application to cancel the 10 Day Notice dated June 2, 2018. The 10 Day Notice is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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: July 26, 2018

Residential Tenancy Branch