



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT RR

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;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

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 tenant was assisted by an advocate.

As both parties were present service was confirmed. The tenant confirmed receipt of the 10 Day Notice of October 28, 2018 on November 2, 2018 and testified that they served the landlord with their application for dispute resolution dated November 7, 2018 and evidence. The landlord confirmed receipt of the tenant's materials and testified that they have not served any evidence of their own. Based on the testimonies of the parties I find that the parties were each served with the respective documents in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an order of possession?

Should the tenant be allowed to reduce rent for this tenancy?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in March, 2018. There is no written tenancy agreement. The monthly rent is \$1,200.00 payable on the first of each month. The rental unit is a single detached home entirely occupied by the tenant.

The parties agree that the tenant has not paid the full rent throughout this tenancy. The parties agree that the tenant has made the following payments towards monthly rent:

Date	Amount Paid by Tenant
March, 2018	\$1,200.00
April, 2018	\$1,200.00
May, 2018	\$600.00
June, 2018	\$800.00
July, 2018	\$1,200.00
August, 2018	\$1,000.00
September, 2018	\$800.00
October, 2018	\$700.00

The landlord said that there was an arrear of \$2,100.00 for rent as at October 28, 2017 the date of the 10 Day Notice and a utility arrear of \$749.40. The tenant testified that they were permitted to make deductions from the monthly rent as there were a number of deficiencies in the rental unit. The tenant testified that there is no agreement that the tenant is responsible for paying utilities to the landlord.

The landlord disputed the tenant's testimony that there is an agreement that allows the tenant to make deductions from the rent. The landlord gave testimony about how they feel they are doing the best they can but are unable to make all of the repairs requested by the tenant without incurring losses.

There was a previous hearing under the file number on the first page of this decision. That hearing dealt with the tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use dated August 7, 2018 and for a repairs and emergency repairs to be made to the rental unit. The 2 Month Notice was cancelled by the previous arbitrator. The following order for repairs was made:

1. By no later than September 26, 2018 the Landlord shall:
 - (a) Hire a qualified electrician to inspect the electrical in the rental unit and provide to the Tenant, within 7 days of receipt of same, a written opinion as to the reason for the power outages.

- (b) Hire a qualified electrician to repair the exterior motion sensor, driveway soffit lighting and front porch light.
- (c) Provide to the Tenant a copy of the invoice from the drain specialists who serviced the drains in July of 2018 and provide to the Tenant any recommendations received from the drain specialists relating to the rental property.
- (d) Should the drain specialists recommend a course of action which has not been undertaken by the Landlord the Tenant is at liberty to make a further application for an Order that the Landlord make such repairs.
- (e) Hire a qualified plumber to repair the hole in the bathtub and the toilet.

The tenant testified that the landlord has not completed the repairs ordered and the rental unit remains in a state of disrepair. The tenant testified about the negative effect that the non-functioning plumbing and sewage has on their life.

Analysis

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case the parties agree that the tenants have not paid the full monthly rent for several months during this tenancy. The tenant submits that this was in accordance with an agreement with the landlord as the landlord has failed to make necessary repairs to the rental suite. The landlord disputes that any agreement was in place and submits that there was an arrear of \$2,100.00 for rent when the 10 Day Notice was issued.

I find there is insufficient evidence in support of the landlord's position. The parties agree that the tenant has made deductions since May, 2018. If there was no agreement that the tenant is permitted to make deductions it is reasonable to expect that the landlord would have taken some action to collect the arrear. The landlord has provided no written evidence of correspondence that the tenant was in violation of the rental agreement prior to the 10 Day Notice of October 28, 2018. The landlord had previously issued a 2 Month Notice to End Tenancy for Landlord's Use in August, 2018 but there is no evidence that there was any issue with the tenant not paying the full amount of the rent. The landlord provided no explanation as to why the tenant would have been permitted to short pay the rent for the majority of this tenancy in the absence

of an agreement to accept the deductions. I find that there is insufficient evidence that the tenant was obligated to pay rent in the amount of \$1,200.00.

I find there is insufficient evidence that the tenant is responsible for paying the utilities for this tenancy or that the tenant has failed to do so. Most of the utility bills submitted into written evidence are in the tenant's name. The landlord has not shown how the arrear that they wrote on their 10 Day Notice is calculated or that the tenant has been given written notice of the utility arrear.

I find that the landlord has failed to meet their evidentiary burden to show on a balance of probabilities that there is a rent or utility arrear. Accordingly, I allow the tenant's application to cancel the 10 Day Notice. The Notice is of no further force or effect this tenancy continues until ended in accordance with the Act.

Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I accept the evidence of the tenant that the rental unit requires repairs and maintenance and that the landlord has failed to perform necessary work. I find that failure of the landlord to comply with the earlier repair order has resulted in a loss of value of the tenancy and that the tenant is entitled to a monetary award.

The tenant testified that the landlord has failed to address the deficiencies ordered to be repaired in the previous hearing. The landlord did not provide evidence that any of the repairs have been undertaken or completed. The tenant testified that there was an agreement with the landlord that allowed them to make the past deductions and I

The tenant suggests a rent reduction of \$300.00, a quarter of the full monthly rent and I find this to be reasonable. While the tenant is able to continue to reside in the rental unit the issues with electricity, sewage and plumbing has a significant negative impact on the tenant.

In accordance with sections 65(1)(f) and 67 of the Act, I find that there is a loss in the value of the tenancy due to the landlord's failure to comply with the repair order issued in the previous hearing. I find that the monetary amount of the loss of value in the rent is \$300.00, a quarter of the monthly rent under the tenancy agreement. Accordingly, I order that the monthly rent for this tenancy is reduced by \$300.00 to \$900.00 until such time as the landlord has completed the repairs ordered in the decision of September 12, 2018.

On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs. **By way of example** and so as to ensure that there is clarity regarding the implementation of my decision, **should the landlord not complete repairs until mid- May 2019**, my order would lead to the following monthly rent payments from January 1, 2019 until June 1, 2019 for this tenancy:

Month	Monthly Rent
January 2019	\$900.00 (\$1,200.00 - \$300.00 = \$900.00)
February 2019	\$850.00 (\$1,200.00 - \$350.00 = \$850.00)
March 2019	\$800.00 (\$1,200.00 - \$400.00 = \$800.00)
April 2019	\$750.00 (\$1,200.00 - \$450.00 = \$750.00)
May 2019	\$700.00 (\$1,200.00 - \$500.00 = \$700.00)
June 2019	\$1,200.00

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

As the tenant has been successful in their application, I also find that they are entitled to recovery of the filing fees from the landlord. I authorize the tenant to make a one-time deduction of \$100.00 from the next monthly rent payable.

Conclusion

The 10 Day Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

I issue a monetary award in the tenant's favour in the amount of \$100.00 for recovery of filing fees. I order that the tenant may make a one-time reduction of their next amount of monthly rent payment to the landlord by that amount.

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by December 31, 2018, I order that the monthly rent for this tenancy for January 2019, is reduced by \$300.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order to modify the reduced rent from an arbitrator appointed under the *Act*. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator.

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: December 17, 2018

Residential Tenancy Branch