Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes AS, RP, CNR, ERP, MNRT

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; authorization to assign the tenancy agreement or sublet the rental unit; obtain orders for repairs, including emergency repairs; and, monetary compenation for the cost of emergency repairs made by the tenant.

Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, the tenant stated he vacated the rental unit on December 17, 2018 pursuant to the 10 Day Notice to End tenancy for Unpaid Rent. The landlord's agents indicated they were unaware of this and had not attempted to enter the rental unit to determine whether the rental unit had been vacated. The tenant stated he left the keys for the rental unit in the mail box at the residential property and confirmed that he did not assign or sublet the rental unit to anybody else. The tenant orally gave consent to the landlord's agents to enter the rental unit. The landlord's agents requested an Order of Possession in the event the tenant has not vacated. The tenant had no objection to this. Accordingly, I provide the landlord with an Order of Possession with this decision to serve and enforce if the tenant has not already vacated the rental unit.

Since the tenancy has already ended, the tenant's requests for authorization to assign the tenancy agreement or sublet the rental unit; cancellation of the 10 Day Notice; and request for repair orders are moot and the only outstanding issue to determine is whether the tenant is entitled to monetary compensation for emergency repairs.

The tenant indicated that he had expected the owner of the property would be attending the hearing since the primary issue to resolve concerning repairs the owner authorized the tenant to make. The landlord's agents indicated they did not intend to call the owner as a witness or to participate and would be relying upon documentation provided to them by them owner. The landlord's agent confirmed that they were not privy to the actual discussions between the tenant and the owner. The tenant indicated the owner ought to be called to the hearing and since documentation cannot be cross examined I was of the view that there may be evidence that the owner would be able to provide that the agents could not. The tenant provided a telephone number for the owner and I called that number during the hearing; however, there was no answer. Accordingly, the hearing was conducted without the benefit of the owner's direct testimony.

Issue(s) to be Decided

Is the tenant entitled to compensation from the landlord for emergency repairs?

Background and Evidence

The tenancy started on October 14, 2018 and the tenant paid a security deposit of $875.00. The tenant was required to pay rent of $1,750.00 on the first day of every month.

I heard the tenant and the owner of the property did an inspection of the property on October 14, 2018 and during the inspection tenant and the owner discussed repairs that were needed to the property. Shortly after the tenancy commenced, the tenant proceeded to make the repairs to the rental unit, including: removing and installing a dishwasher, removal of the shower door, replacing the deadbolt, replacing a heating thermostat, and painting a bedroom. The tenant stated the owner authorized him to do all of these repairs during the inspection and that there was an earlier discussion with the owner that he would be compensated $45.00 per hour for his labour when the parties had discussed a potential caretaking agreement.

The tenant sent a request for payment for repairs he made to the owner on October 23, 2018, via email. The owner responded the following day indicating he was not agreeable to the compensation sought by the tenant. The parties exchanged a number of emails on this issue in late October 2018, which were provided as evidence.

In an email written by the owner on October 24, 2018, the owner does acknowledge that he authorized the tenant to replace the dishwasher, remove the shower door, and

replace the deadbolt; however, he indicates that he did not agree that the tenant would be compensated for his labour except when the parties had a previous discussion about the tenant performing caretaking duties once a caretaking agreement was reached, but that one was not in place when the tenant performed the repairs. The landlord sent the tenant a cheque for payment for the cost of materials for the new dishwasher, shower door and deadbolt in the amount of $890.28.

The tenant was of the position that it is unreasonable for the owner/landlord to expect that the dishwasher and deadbolt would install themselves and that a reasonable amount of labour should be recognized. The tenant stated that he did the repairs because he was the tenant and the work needed to be done, and not because he was acting as a contractor for the landlord. The tenant pointed to the owner's email of October 24, 2018 where the owner acknowledges a labour rate of $45.00 per hour.

The tenant then withheld $524.92 from his December 2018 rent payment. The $524.92 is comprised of $483.75 for labour, plus $7.55 to have keys cut for the property manager, and $33.62 for a new door sweep. The tenant submitted that the landlord subsequently sent him a cheque for $7.55 but the tenant returned it to the landlord without cashing it.

The landlord's agents pointed out that the tenant did not have authorization to deduct $524.92 from the December 2018 rent payment. The tenant did not argue with that point and acknowledged he took it upon himself to compensate himself despite the owner's disagreement with compensating the tenant.

The landlord's agents confirmed that the landlord will be pursuing the tenant for the unpaid rent of $524.92 among other damages and loss. Since the tenant has already deducted this sum from rent, the tenant seeks authorization or an order of the director that the tenant was entitled to the compensation of $524.92 and the landlord not be permitted to pursue the tenant for the sum of $524.92.

Analysis

My authority to resolve disputes is provided by the Director of the Residential Tenancy Branch under the *Residential Tenancy Act* ("the Act"). Accordingly, remedies I can provide are those provided for under the Act and do not extend to the law of equities.

As I informed the parties during the hearing, my jurisdiction is limited to residential tenancy agreements between a landlord and a tenant concerning a rental unit and

residential property. By definition provided in section 1 of the Act, a tenancy agreement pertains to a tenant's "possession of a rental unit, use of common areas and services and facilities" provided. My authority does not extend to contracts for services or employment contracts except where such a contract may impact the tenancy agreement or rights and obligations of a landlord or tenant under the Act. For example: a landlord and tenant enter into a contract for services and as compensation for the tenant's services the landlord authorizes the tenant to withhold rent as payment for those services. In such a case, I would have authority to delve into the contract for services if there was a dispute concerning the tenant withholding rent. However, it is important to point out that just because two people have a landlord/tenant relationship does not automatically mean that any and every dispute they may have falls under the Act and resolved through the Residential Tenancy Branch. Rather, where parties have a contract other than a tenancy agreement, the parties will have to avail themselves of remedies concerning their other contracts in the appropriate forum such as: Small Claims Court, Civil Resolution Tribunal, Employment Standards Branch, or the like, as appropriate in the circumstance.

In the matter before me, it is clear to me that the tenant and the owner of the property had a meeting of the minds that the tenant would perform at least some repairs to the property. This is evidence by the owner's email of October 24, 2018 whereby the owner acknowledged authorizing the tenant to make three specific repairs: replacement of the dishwasher, replacement of the deadbolt, and removal of the shower door. However, the emails do not reflect that the tenant would be compensated by way of making deductions from rent that was payable under the tenancy agreement. The tenants own emails to the owner indicate the tenant expected payment from the owner by way of payment from the owner that was separate from rent. To illustrate, I have referenced to two emails written by the tenant, as set out below:

> On October 24, 2018 the tenant wrote, in part: "…I've heard you clearly and await caretaker agreement along with payment of invoice. Via cheque in mail or email transfer?"
>
> On October 26, 2018 the tenant wrote, in part: "Please do not deposit the rent cheque until you have sent full remittances of invoice and receipts."
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> [My emphasis underlined]

The landlord subsequently sent the tenant two cheques: $890.28 and $7.55 for materials.

Considering the tenant invoiced the owner for materials and labour for repairs he performed at the property and expected payment from the owner via cheque or e-transfer, separate from rent, and the landlord did send payments to the tenant via cheque, I am of the view that the repair work performed by the tenant was part not part of the tenancy agreement or that compensation would be in the form withholding rent. Rather, the parties' communication and action is consistent with of a contract for services.

The tenant argued that he made the repairs because he was the tenant, and not because he was acting as a contractor. Under the *Residential Tenancy Act*, the only type of repairs a tenant may undertake and make a deduction from rent is where the tenant makes an "emergency repair", as provided under section 33 of the Act. This is the provision under which the tenant made his monetary claim. As such, I proceed to explore whether the tenant should be compensated under section 33 of the Act.

Section 33 of the Act defines emergency repairs as follows:

> **33** (1) In this section, **"emergency repairs"** means repairs that are
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> (a) urgent,
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> (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
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> (c) made for the purpose of repairing
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> (i) major leaks in pipes or the roof,
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> (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
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> (iii) the primary heating system,
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> (iv) damaged or defective locks that give access to a rental unit,
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> (v) the electrical systems, or
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> (vi) in prescribed circumstances, a rental unit or residential property.
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> (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.

[My emphasis underlined]

Section 33 contemplates situations and provides a remedy where an emergency occurs and it is necessary for the tenant to undertake the emergency repair in a timely manner because the landlord has not responded to the tenant's two attempts to reach the landlord. In the case before me, the tenant did not undertake repairs because he tried to contact the landlord on at least two occasions and had to proceed to make an emergency repair because the landlord would not respond. Rather, according to the tenant, the parties met at the unit to discuss repairs to be made at the property along with obtaining authorization to proceed to make certain repairs, and I find that activity to be more in keeping with a contract for services rather than a circumstance contemplated under section 33.

In light of all of my findings above, I find the tenant did not have a legal right to withhold rent payable. The tenant did not have the landlord's authorization to make a specific deduction and the tenant did not make emergency repairs pursuant to section 33 of the Act. Rather, I am of the view the tenant and the owner had a contract for services and the dispute concerning that contract should be resolved in the appropriate forum. Therefore, I deny the tenant's request that I authorize him to withhold rent or otherwise restrict the landlord's right to pursue the tenant for unpaid rent.

Having denied the tenant's request, and the other issues raised by the tenant were moot at the time of the hearing, I dismiss the tenant's application in its entirety.

Conclusion

The tenant did not have and I do not grant authorization for the tenant to withhold rent otherwise payable. I have found the repair work performed by the tenant at the residential property is a contract for services that I do have jurisdiction to resolve. The tenant remains at liberty to pursue a remedy against the owner for repairs he made in the appropriate forum.

The other remedies sought by the tenant in his application are moot since the tenancy has already ended.

The landlord was authorized to enter the rental unit to determine whether the rental unit has been vacated and the landlord has been provided an Order of Possession to serve

and enforce in the event the tenant has not already vacated, with consent of the tenant.

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 23, 2019

Residential Tenancy Branch