



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RP, ERP, RPP, MNDCT, OT

Introduction

This hearing convened as a Tenant's Application for Dispute Resolution, filed on April 30, 2019, wherein the Tenant requested the following:

- an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on April 23, 2019 (the "Notice");
- an Order that the Landlord make repairs, emergency and otherwise;
- an Order that the Tenant be permitted to reduce her rent for the cost of repairs, services or facilities;
- an Order for monetary compensation in the amount of \$35,000.00; and,
- other unspecified relief.

The hearing was conducted by teleconference at 11:00 a.m. on June 7, 2019 and continued at 1:30 p.m. on June 14, 2019. Both parties called into the hearings and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, although the hearings included nearly two hours of testimony from the parties, only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Additionally, hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I find that this claim is not sufficiently related to the Tenant's monetary claim; accordingly I exercise my discretion and dismiss the Tenant's monetary claim with leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to an Order that the Landlord make repairs, emergency and otherwise?
3. Is the Tenant entitled to reduce her rent for the cost of repairs, services or facilities?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord presented their evidence first.

The Landlord testified as follows. He stated that the tenancy agreement was signed on October 21, 2017 and the tenancy began November 1, 2017. Monthly rent pursuant to

the tenancy agreement is \$1,500.00. The Tenant and her son moved into the main house on his property and paid rent as of November 1, 2017.

Paragraph 9 of the addendum to the residential tenancy agreement reads as follows:

- 9. Landlord willing to have tenant do maintenance and repairs for reasonable consideration, provided terms are agreed upon before work commences and landlord confirms that costs can be born at the time.*

The Landlord confirmed that during 2018 he allowed the Tenant to do work on the property as set out in the addendum and compensated her for her time and any out of pocket expenses. The Landlord also testified that in 2018 he hired the Tenant as a general contractor and property manager to do other work on his other properties for which he paid her through online transfers, as well as rent reductions. The Landlord stated that in 2018, the Tenant was credited for her work by way of rent reductions and did not pay rent for any month in 2018, save and except for June 2018, when she paid \$950.00.

The Landlord stated that the Tenant rents the main house with her son and in 2018 it appeared the house was too much for her to handle. The Landlord testified that on December 29, 2018 he offered to reduce the Tenant's rent to \$900.00, although the Tenant did not accept his offer. He also suggested she move into an A-Frame residence (on the same property) which is smaller and easier to manage and offered to rent it to her for \$900.00. Again, she refused his offer.

The Landlord testified that he discontinued the Tenant's services as of December 2018, and as a result the Tenant did not work for him between January and June 2019.

The Landlord stated that the Tenant failed to pay her rent in January of 2019 and has not paid any rent since.

The Landlord confirmed that another person, the Tenant's father, R.O., was hired to do work at the rental property over the winter of 2018 and the Tenant was not part of that arrangement. R.O. started November 2018 and worked on the main house and the A-Frame. The Landlord stated that he hired only R.O. and that he has paid R.O. a total of \$26,000.00 for his services. The Landlord stated that R.O. is no longer working for the Landlord and stopped as of April 19, 2019.

In response to the Landlords' testimony regarding the Notice, the Tenant testified as follows.

The Tenant testified that she did not pay rent for 2018, but claimed this was because of the ceiling caving in, as well as the presence of mould, and improperly functioning plumbing, not because of any work she did for the Landlord.

The Tenant confirmed that she was working for the Landlord as a property manager on other properties and began December 12, 2017 and worked for the Landlord during the entire year of 2018. The Tenant stated that she managed ten suites in total for the Landlord. She claimed that the Landlord owed her \$51,403.40 for her services as well as out of pocket expenses.

The Tenant also testified that the Landlord sent her an email confirming that he was terminating her employment contract in 2018. The Tenant stated that he sent another email referencing the year 2019 such that the Tenant took it that as of January 1, 2019 she was no longer employed by him.

The Tenant confirmed that she has not managed any properties nor has she done any other work for the Landlord in the year 2019. The Tenant also stated that she has not worked for her father in 2019.

The Tenant confirmed that she did not pay any rent to the Landlord in 2019 because she believes he owes her money.

The Tenant stated that they had a prior hearing on February 28, 2019 at which time the Tenant applied to cancel a 10 Day Notice which had been issued in January. The Landlord failed to attend the hearing and the Tenant's application was granted. The file number for that matter is noted on the unpublished cover page of this my Decision.

Analysis

After consideration of the relevant testimony and evidence of the parties and on a balance of probabilities I find as follows.

I find that the tenancy began November 1, 2017. Pursuant to the tenancy agreement, monthly rent was payable in the amount of \$1,500.00. Also pursuant to the agreement the Tenant was also permitted to do maintenance and repairs on the rental property

provided the work was agreed to by the Landlord in advance. Documentary evidence submitted by the parties confirms they regularly communicated about such tasks until the end of December 2018.

The parties also entered into a separate employment agreement whereby the Tenant was to provide property management services as well as other work for the Landlord. I accept the Landlord's evidence that as a result of this separate agreement, the Tenant was only obligated to pay rent once in 2018.

The undisputed evidence of the parties is that as of January 1, 2019, the Tenant was no longer employed in any capacity by the Landlord. Further the undisputed evidence is that the Tenant also did not perform any property management services or other work for the Landlord in 2019.

While the Landlord offered to reduce the Tenant's rent to \$900.00 per month as of January 1, 2019, or for the Tenant to move into a smaller more manageable home, I accept the Landlord's evidence that these offers were not accepted by the Tenant. As such, I find that the Tenant remained liable for the full \$1,500.00 in rent as per the tenancy agreement.

The undisputed evidence was that the Tenant has not paid rent for January-June 2019.

Pursuant to section 26 of the *Act*, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the *Act*, unless the Tenant has some authority under the *Act* to not pay rent. There are only four such instances where a Tenant may withhold rent, including the following:

1. in Arbitrator makes an Order authorizing the tenant to withhold rent;
2. when a Landlord accepts more than one half a month's rent for either the security or pet damage deposit (s.19(2));
3. when the Landlord increases the rent over the allowable amount (s. 43(5)); or,
4. the Tenant is entitled to compensation pursuant to section 33 of the *Act* for the cost of emergency repairs.

I find, based on the evidence before me, that the Tenant had no such authority under the *Act* to not pay rent for the time period January through June 2019.

Having made the above findings, I therefore find the Landlord has met the burden of proving the reasons for issuing the Notice. Consequently, the Tenant's Application to cancel the Notice is dismissed.

Pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Having ended the tenancy, the Tenant's request for an Order that the Landlord make repairs, emergency and otherwise and an Order that the Tenant be permitted to reduce her rent for the cost of repairs, services or facilities are no longer relevant; as such, they are dismissed without leave to reapply:

As previously noted, the Tenant's claim for monetary compensation from the Landlord is dismissed with leave to reapply. The parties are reminded that an Arbitrator may only decide matters which fall under the *Residential Tenancy Act*, and that employment related matters are outside the Branch's jurisdiction.

Conclusion

The Tenant's claim for an Order canceling the Notice is dismissed without leave to reapply.

The Tenant's claim for monetary compensation from the Landlord is dismissed with leave to reapply.

The balance of the Tenant's claim is dismissed without leave to reapply.

The Landlord is granted an Order of Possession effective two days after service.

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: June 20, 2019

Residential Tenancy Branch