



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT OLC RP

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 requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

GM ("landlord") appeared as agent for the landlord in this hearing. 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 ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 10 Day Notice on August 15, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

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

Background and Evidence

This fixed-term tenancy began on April 15, 2019. Monthly rent is set at \$1,750.00, payable on the first of every month. There is no security deposit for this tenancy. The current landlord purchased the property from the previous landlord, and took possession on July 15, 2019.

The current landlord issued the tenant a 10 Day Notice for Unpaid Rent on August 15, 2019 for failing to pay the August 2019 rent. The tenant disputes this 10 Day Notice stating that under the tenancy agreement he was to perform repairs on the property, which can then be applied towards the monthly rent. A copy of the tenancy agreement was submitted in evidence by the tenant, which was signed by the landlord on February 13, 2019, and by the tenant on February 15, 2019. Monthly rent is noted at \$1,750.00 in the section titled "rent". An addendum was also included, which was signed by both parties, and dated February 11, 2019.

The addendum reads:

"Addendum to rental agreement..

[Tenant] to have access to the home immediately, to effect necessary repairs to render the home livable.

[Tenant] to pay for all repairs required and supply bills and receipts for all work and supplies require.

List of repairs to include:

Reconnect power and rewire as required

Re-heat the home

Repair damaged plumbing

Replace fridge, stove, dishwasher, microwave and washer, dryer with used appliances

Replace interior door

And other items identified that will affect the livability of the home.

Cost of repairs to be deducted from rent.

[Tenant] to ensure the property is properly insured with Tenants insurance

Building insurance is the responsibility of the Owner."

The tenant testified that this special arrangement was made between the previous owner and himself as the landlord and the neighbour had made plans to subdivide the property and sell it. After the neighbour backed out, the landlord had decided to rent the home to the tenant in order to avoid the new empty home tax, and have the tenant repair the home and bring the home back to code in exchange for the monthly rent.

The landlord sold the home to the new landlord, and the tenant testified that after meeting with the landlord, the new landlord did not acknowledge the tenant's right to deduct rent in compensation for repairs. The tenant has not paid any rent to the new landlord as he feels that he had performed repairs that have yet to be reimbursed for. The tenant included a log of the repairs in his evidentiary materials. The tenant is also seeking an Order for the landlord to comply with the *Act*, and perform repairs to the home including installing a working furnace.

The landlord responded in the hearing that he had yet to see any receipts from the tenant, and therefore the tenant did not have the right to deduct any rent for the repairs completed. The landlord did not dispute that the home does not have a gas meter or furnace, but that the tenant could use an alternative means of heating the home such as the electric heaters the tenant is currently relying on.

Analysis

I find the tenant and previous landlord had entered into a tenancy agreement that began on April 15, 2019, and which included an addendum signed by both parties. As the home was sold to the new owner in July of 2019, the tenant and new landlord are therefore bound by the same terms under this tenancy agreement and the *Act*. I find that the Addendum was dated and signed by both the tenant and previous landlord, and is valid. I find that the terms of the tenancy agreement, as set out in the Addendum, allows the tenant to make deductions from the rent for repairs completed.

Section 26 of the *Act*, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is 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.

Based on these facts, I find that the tenant had the right under the *Act* and tenancy agreement to make deductions for repairs that have been completed. Although it is disputed as to the amount that may be deducted as the landlord disputes having seen any receipts, I find that the landlord has failed to provide sufficient evidence to support that the tenant had failed to fulfil his obligations under section 26 of the *Act*. Accordingly, the 10 Day Notice dated August 15, 2019 is

cancelled, and is of no force or effect. This tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

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.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that it is undisputed that the home's primary heating system requires repairs. At the same time, I find that the tenant had moved into the home under an agreement with the previous landlord that repairs may be made by the tenant, including a term for the tenant to "re-heat the home". I order that the landlord perform repairs to the primary heating system of the home as required by section 32 of the *Act* as stated above, or alternatively allow the tenant to perform the repairs and submit receipts and invoices which the landlord shall reimburse the tenant for in a timely manner. I order that the repairs to the primary heating system be completed within 3 weeks of the receipt of this Order, unless the landlord can provide sufficient proof of why this is not possible.

I allow the tenant the filing fee for this application. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

Conclusion

The tenant's application to cancel the 10 Day Notice is allowed. The 10 Day Notice, dated August 15, 2019, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord perform repairs to the primary heating system as required by section 32 of the *Act*.

I allow the tenant to recover the filing fee for this application. I issue a monetary award in the tenant's favour in the amount of \$100.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: October 24, 2019

Residential Tenancy Branch