



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR FFT RP

Introduction

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- Authorization to recover the filing fee from the landlord pursuant to section 72; and
- An order that the landlord perform repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by an advocate.

As both parties were present service was confirmed. The parties each confirmed they were in receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials 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?

Is the tenant entitled to recover the filing fee from the landlord?

Should the landlord be ordered to perform repairs to the rental unit?

Background and Evidence

There have been numerous hearings regarding this tenancy under the file numbers on the first page of this decision.

There was a hearing on April 27, 2017 where the parties in attendance entered a final and binding settlement agreement which provides that no later than May 30, 2017, the landlord will repair:

- Three electrical outlets in the living room
- Two electrical outlets in the kitchen
- Three elements on the stove
- The stove oven
- Back door
- Rat infestation and rat holes
- Bathroom shower leak
- Dryer vent

The landlord submits that they have neither the means nor intention to perform the ordered repairs. They gave some vague testimony that they have hired an unlicensed handyman to do some work to the rental building but provided no details or documentary evidence in support of these submissions.

As a result of a series of subsequent decisions, including a decision issued by this arbitrator on October 16, 2017, the tenant has been authorized to withhold the full rent for this tenancy rent until such time as the landlord complies with repair orders issued by the Residential Tenancy Branch.

In my decision of October 16, 2017 I wrote in part:

In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by October 31, 2017, I order that the monthly rent for this tenancy for November 2017, is reduced by \$200.00. 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 will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

I further elaborated:

Should a dispute arise as to the extent to which the repairs agreed to in the settlement agreement 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.

The parties agree that the landlord has not made any application to obtain an order restoring the monthly rent to its full amount.

The landlord issued a 10 Day Notice dated August 10, 2019 claiming that rent in the amount of \$2,640.00 was payable on June 1, 2019. The tenant filed their application to dispute the 10 Day Notice on August 14, 2019.

The tenant testified that the landlord has not performed the repairs as ordered in the earlier decisions. The tenant says that the condition of the rental unit has continued to deteriorate due to the landlord's lack of maintenance and repairs. The tenant seeks an order that the landlord perform the following additional repairs:

1. water damage in the bathroom
2. Hot water tank needs replacing as it is hissing and corroded with rat feces
3. Washer and Dryer
4. All mess from rats cleaned up (including floorboards and walls)
5. Fresh paint due to the rats (and it has been 10 years since last painted)
6. Plumbing issues (washer drains into bathtub, terrible smell)

The tenant provided some photographs of the rental unit as evidence of the need for these repairs.

Analysis

The principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided.

I find that the repairs the tenant seeks in their present application are related to the repairs previously ordered and are sufficiently addressed in the earlier order. I find that issues such as water damage, plumbing issues and the damage caused by rats is addressed in the earlier order that the landlord resolve the rat infestation and leaks. As such, I find that I have no jurisdiction to issue a further order on an issue that has conclusively determined and decline to issue an order for repairs.

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. In this case, the tenant received the 10 Day Notice on August 10, 2019, and applied within five days of receipt on August 14, 2019. Accordingly, the tenant complied with the five day limit under the *Act*.

I accept the undisputed evidence that the landlord has not applied to restore the rent to its original amount. I find that the tenant was authorized to withhold the full amount of the monthly rent for this tenancy due to the landlord's non-compliance with the earlier order. Therefore, I find that no rent was due or owing and there was no basis for the landlord to issue the 10 Day Notice of August 10, 2019. Accordingly, I allow the tenant's application and cancel the 10 Day Notice.

The landlord has not complied with the repair order issued on April 27, 2017 and has given evidence that they have no intention of doing so. Furthermore, the landlord has issued a series of Notices to End Tenancy and has testified that they will continue to take steps to attempt to end this tenancy. I find the landlord's attitude and continued violation of the earlier orders to be worthy of rebuke and any further issuance of Notices to End Tenancy may give rise to a basis for the tenant to seek a monetary award for loss of quiet enjoyment.

As the tenant was successful in their application they are entitled to a monetary award to recover their filing fee from the landlord.

Conclusion

I find I have no jurisdiction to make a finding on the request for a repair order.

The tenant's application to cancel the 10 Day Notice is granted. The notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

I issue a monetary order in the tenant's favour in the amount of \$100.00. 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 18, 2019

Residential Tenancy Branch