



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes CNR, RP, MNDT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) issued on March 2, 2020, to have the landlord make repairs to the rental unit, for a monetary order and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on March 1, 2018. Rent in the amount of \$1,200.00 is payable on the first day of each month. No security deposit was paid.

The parties agreed that on September 12, 2018, the landlord was ordered to make repairs to the rental unit. I have noted the file number on the covering page of the decision.

The parties agreed that On December 17, 2018, the tenant was granted a rent reduction of \$300.00, which increased by \$50.00 per month until the repairs were completed. I have noted the file number on the covering page of the decision.

The parties agreed that on February 24, 2020, the landlord was ordered to inspection, and repairs, if necessary certain items(I note this was ordered as the landlord had consented). I have noted the file number on the covering page of the decision.

The landlord's agent testified that all the repairs in the September 12, 2018, decision have been completed and the tenant is required to pay the full amount of rent as of March 1, 2020. The agent stated that the tenant did not pay the full rent for March 2020, and they were served with the Notice.

The tenant's agent stated that the tenant does not agree that the repairs have been completed. The agent stated that in the Decision of December 17, 2018, which granted the tenant a reduction of rent also states that if a dispute arise as to whether the repairs are completed, that it is the landlord obligation to have that matter determined by an Arbitrator.

The landlord's agent argued that the tenant did not informed them that they disputed that the repairs were made until after they received the Notice.

The landlord's agent stated that they have received a letter for the enforcement and compliance unit that they are satisfies that the repairs are made and that they have ceased to apply the penalties.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case, the landlord's position is that the September 12, 2018, order for repairs has been completed and the tenant is to pay the full rent of \$1,200.00 for March 2020. The tenant's position is that the repairs have not been completed and they were only required to pay the amount of \$200.00 for March 2020.

While I accept that the enforcement and compliance unit is no longer involved, and it is more likely than not that the repair order made on September 12, 2018, has been complied with. However, as the parties disagree on this issue, I find that the decision of December 17, 2018, places the onus on the landlord to make an application for dispute resolution to prove they have complied with the decision of September 12, 2018.

Since that issue has not been determined by an Arbitrator, I decline to consider the Notice as the tenant has the right under the Act to withhold rent, based on the December 17, 2018, order. Therefore, I find it appropriate to cancel the Notice. As the tenant was successful with their application, I grant the tenant the cost of their filing fee. The tenant is authorized a onetime rent reduction of \$100.00 from May 2020, rent. Total rent payable for May 2020 is \$100.00. (\$200.00 - \$100.00=\$100.00)

As the decision of December 17, 2018, stated that once this issue of the repairs is in dispute the tenant's rent remains at the amount of the last rent reduction. Therefore, I find the tenant's last rent payable after the rent reduction was applied was \$200.00. I find the tenant cannot reduce rent any further until this matter is determined, except for the above reduction that I have granted for May 2020.

The tenant has referred to a decision made on February 24, 2020 in their application. Although I accept the decision made an order regarding additional inspections and repairs, if necessary. The decision does not state that the tenant is entitled to any rent reduction or that the rent reduction made on the December 17, 2018, would apply. That issue was not before the Arbitrator. I find the rent reduction given on December 17, 2018, is only related to the repair order made on September 12, 2018.

I also informed the tenant at the hearing that if the landlord is successful at a future hearing showing the repair order of September 12, 2018, were completed, that the tenant more likely than not will be obligated to pay the full rent from when the repairs were completed. I only provide this information for the benefit of the tenant, to ensure that the tenant keeps the full monthly rent of \$1,200.00, until this matter is determined; so, they do not put their tenancy at risk should a future notice to end tenancy be issued. The tenant confirmed they understood this.

Conclusion

The tenant's application to cancel the Notice is granted. The tenant's total rent for May 2020 is payable in the amount of \$100.00, this is to recover the filing fee.

All subsequent rent after May 2020, is set at \$200.00 until such time as the landlord's application for dispute resolution has been determine on whether they have complied with the September 12, 2018, orders.

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: April 8, 2020

Residential Tenancy Branch