



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VOTL DEVELOPMENTS LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, RR, OLC, MNDCT, FFT / OPR-DR, OPRM-DR, FFL

Introduction

On September 15, 2020, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) to cancel a 10-day Notice to End Tenancy for Unpaid Rent, dated September 10, 2020 (the “10 Day Notice”), to reduce the rent, to order the Landlord to comply with the Act, to request a Monetary Order for compensation, and to recover the cost of the filing fee.

On September 25, 2020, the Landlord submitted an Application for Dispute Resolution by Direct Request under the Act. The Landlord requested an Order of Possession for unpaid rent, a Monetary Order to recover the unpaid rent, and to recover the cost of the filing fee. The Landlord’s Application was crossed with the Tenants’ Application and the matter was set for a participatory hearing via conference call.

The Landlord and Tenant attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

Preliminary Matter

The Tenant submitted five separate claims as part of this Application, and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenant to prioritize the issues that he wanted to address in this hearing, and he agreed that the request to cancel the 10 Day Notice was the priority. For these reasons, I dismissed the request for a rent reduction, to order the Landlord to comply with the Act, and the Monetary Order for compensation with leave to reapply in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

Issues to be Decided

Should the 10 Day Notice be cancelled, in accordance with Section 46 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Tenants be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Should the Landlord be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Both parties agreed to the following terms of the tenancy:

The one-year, fixed-term tenancy began on February 1, 2019 and continues as a month-to-month tenancy. The rent is \$1,200.00 and due on the first of each month. The Landlord collected and still holds a security deposit.

Both parties agreed to the following:

The Landlord personally served the 10 Day Notice to the Tenant on September 12, 2020 as the Tenants had only paid \$967.42 in partial rent for September 2020. The 10 Day Notice indicated that the Tenants had failed to pay \$232.58 in rent and provided a move-out date of September 22, 2020.

The Landlord submitted that the Tenants had claimed an emergency repair of their kitchen sink as the reason for the partial rent payment for September 2020.

The Landlord testified that the sink had been causing trouble for the Tenants since January of 2020. The Landlord stated it was the Tenants' actions of clogging the drain with food that caused the blockage. Although the Landlord had responded to the Tenants' concerns about the blockage several times, the repeated blockage is, according to the Landlord, the Tenants' fault and not the Landlord's responsibility.

The Landlord served the 10 Day Notice and has since applied to obtain an Order of Possession for the rental unit as the Tenants have not fully paid their September 2020

rent. The Landlord acknowledged that the Tenants have fully paid their October and November 2020 rent.

The Tenant submitted that they have been very careful about the things they put down their kitchen drain, especially since the Landlord has attended to clear blockages earlier in the year.

The Tenant testified that he contacted the Landlord's maintenance person ("S") for the residential property on August 10, 2020 to advise that the kitchen sink was draining slowly and that there was a leak underneath the sink. The Tenant stated that S responded and attempted to clear the leak with a plunger. The Tenant texted S on August 14, 2020 and advised that the situation with the sink was worse, was still leaking and asked if S could attend again or send someone over to assist. The Tenant said there was no response.

The Tenant stated that he attempted to call the manager on August 19, 2020, followed up with a text and then documented his concerns in an email, dated August 20, 2020, to the manager that the leak was worsening and causing damage to the interior of the rental unit.

The Tenant provided copies of text messages with the manager and submitted a text that indicated the Landlord wanted to have the Tenants take care of the issue at their own expense.

The Tenant submitted an invoice that recorded the service call from a plumbing company at the rental unit on August 28, 2020. The invoice indicated that the technician "took apart and cleaned the p-trap of food, etc. Tested, still clogged. Cut off 45 and ran auger 8-10' to clear blockage. Replaced 45 degree fitting tested with good flow. Found tail piece leaking on other side of sink, replaced tail piece, tested with no leaks." The invoice was for \$232.58.

The Tenant stated that he submitted the invoice to the Landlord on September 6, 2020 and explained that he would be deducting the amount from the September 2020 rent.

The Tenant submitted a letter from the plumbing company, dated September 15, 2020, with an opinion that "there is no evidence of culpability of the current tenant" for the service call on August 28, 2020. The letter also includes an opinion that "This type of service is not consistent with such a short period, and likely had been building up for many years prior to the current tenancy." The Tenant stated that there have not been any drainage or leak issues since August 28, 2020.

The Tenant submits that he was able to deduct the amount of the plumbing repair from the September 2020 rent, pursuant to section 33 of the Act. The Tenant requests that the 10 Day Notice be cancelled.

Analysis

Section 33 of the Act provides guidance for emergency repairs. In part, it defines an emergency repair as a repair that is urgent, necessary for the preservation or use of the residential property and made for the purpose of repairing damaged or blocked water or sewer or plumbing fixtures.

I accept the Tenant's evidence and find that the repair to the blockage in the kitchen sink and the resulting leaking water was urgent and was necessary for the preservation and use of the residential property.

Based on the Tenant's undisputed testimony and evidence, I find that the Tenant advised the Landlord that emergency repairs were required, the Tenant communicated with the Landlord via text, email and telephone in an attempt to advise the Landlord of the issues and, gave the Landlord a reasonable amount of time to make the repairs.

In this case, the Landlord did not complete the emergency repairs and the Tenant proceeded to call a plumber to address the blockage in the sink and the leak in the drainpipes. The Tenant subsequently gave the Landlord a written account of the emergency repairs and provided a copy of the invoice.

Section 33 of the Act states that a landlord does not have to reimburse a tenant for emergency repairs if the damage was caused primarily by the actions or neglect of the tenant. The Landlord, in this case, submitted that the Tenants were responsible for the blockage and therefore, responsible for the repair.

After considering who was responsible for the blockage and reviewing the evidence presented, I find that, on a balance of probabilities, that the Tenants were not at fault for the blockage. In this regard, I reference the Tenants' statement that they have been careful with what they put down the drain; that the blockage was still present after the plumbing company cleaned the p-trap; that the plumbing company had to cut into the drainpipes and auger 8-10 feet in order to thoroughly address the issue; and, that the plumbing company opined that this issue could have developed over "many years".

I find that the Tenants were able to deduct the amount of the plumbing invoice, in the amount of \$232.58, from their September 2020 rent, pursuant to section 33 of the Act. As a result, I find that the 10 Day Notice is not valid and is cancelled.

I dismiss the Landlord's Application for a Monetary Order for unpaid rent and an Order of Possession without leave to reapply. As the Landlord's Application was unsuccessful, I also dismiss their request for compensation for the filing fee.

As the Tenants' Application was successful, I find that they should receive compensation for the filing fee, in the amount of \$100.00.

Conclusion

The Landlord's Application is dismissed without leave to reapply.

The Tenants' Application is granted, and the 10 Day Notice is cancelled. This tenancy shall continue until ended in accordance with the Act.

As compensation for the filing fee, I authorize the Tenant to deduct \$100.00 from a future rent payment to the Landlord, in accordance with Section 72 of the Act.

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: November 10, 2020

Residential Tenancy Branch