



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL (Landlord)
 OLC, PSF, MNDCT, RR, CNR, RP, LRE (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Landlord filed the application November 23, 2020 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 12, 2020 (the “Notice”);
- To recover unpaid rent; and
- To recover the filing fee.

The Landlord filed an amendment January 28, 2020 seeking to amend the Landlord’s Application to include the following monetary claims:

- \$8,800.00 for unpaid rent;
- \$39,000.00 for damage; and
- \$19,847.88 for compensation for monetary loss or other money owed.

The Tenant filed the application November 30, 2020 (the “Tenant’s Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement;
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- For compensation for monetary loss or other money owed;

- To reduce rent for repairs, services or facilities agreed upon but not provided;
- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities;
- For a repair order; and
- To suspend or set conditions on the Landlord's right to enter the rental unit.

The Tenant appeared at the hearing. The Landlord appeared at the hearing late. The Landlord appeared with her husband.

The Tenant advised at the outset that he had moved out of the rental unit three weeks prior to the hearing. Given this, I asked the Tenant what he intended to do with the Tenant's Application. I also explained to the Tenant that many of the claims are now a moot point given he has vacated the rental unit. After a lengthy discussion about this, the Tenant withdrew the only remaining relevant claims. I told the Tenant numerous times throughout this discussion that I would hear from the Landlord on the Landlord's Application if the Landlord called into the hearing prior to the hearing concluding. As the hearing was concluding, the Landlord called into the hearing. Given this, I heard from both parties in relation to the Applications.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Landlord agreed the Tenant had vacated the rental unit and withdrew the request for an Order of Possession.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord testified that the hearing package was sent to the Tenant at the rental unit by registered mail December 04, 2020. The Tenant's testimony in relation to what he received from the Landlord and when was not clear. The Tenant acknowledged receipt of a package about the Landlord's Application. The Tenant also acknowledged receipt of the Monetary Order for unpaid rent for October to February in the amount of \$11,000.00. The Tenant acknowledged understanding that the issue of unpaid rent would be dealt with at the hearing.

In relation to the Landlord's amendment, the Tenant denied receiving this or knowing about this. The Landlord testified that the amendment was served on the Tenant. However, when asked details about service, the Landlord provided different dates of service and different tracking numbers. It was clear the Landlord did not know what

tracking numbers related to what documents because the Landlord continually provided different tracking numbers each time the Landlord was asked about service of a package. I also note that the Landlord testified that the amendment was sent to the rental unit despite the Tenant no longer living at the rental unit at the time.

Pursuant to rule 4.6 of the Rules of Procedure (the “Rules”), the Landlord had the onus to prove service of the amendment. I was not satisfied that the amendment was served in accordance with rule 4.6 of the Rules or section 89(1) of the *Residential Tenancy Act* (the “Act”) because the Landlord did not seem to know the date of service or the related tracking number. Further, the package was sent to the rental unit when this was neither the Tenant’s residence at the time or the Tenant’s forwarding address. Given I was not satisfied of service of the amendment, I told the Landlord I would not amend the Landlord’s Application.

I did proceed with the Landlord’s Application to recover unpaid rent and the filing fee given the Tenant acknowledged receiving a package about the Landlord’s Application and acknowledged understanding that the issue of unpaid rent would be dealt with at the hearing.

In relation to the Tenant’s Application, the Landlord testified that she did not receive the hearing package or evidence for this. The Landlord testified that she was not aware of the Tenant’s Application.

The Tenant testified that he served the hearing package and evidence for the Tenant’s Application on the Landlord by sending it to an address he had for the Landlord by regular mail a month prior to the hearing.

Pursuant to rule 3.5 of the Rules, the Tenant was required to prove service of the hearing package and evidence for the Tenant’s Application. The Tenant was required to serve the hearing package in accordance with section 89(1) of the *Act*. Regular mail is not a form of service permitted under section 89(1) of the *Act*. Further, the parties gave conflicting testimony about service and the Tenant did not point to any evidence to support his testimony. In the circumstances, I was not satisfied of service of the hearing package or evidence.

Given I was not satisfied the hearing package was served on the Landlord, the Tenant’s Application was dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Act*.

Given I was not satisfied the Tenant's evidence was served on the Landlord, I have excluded the evidence pursuant to rule 3.17 of the Rules as I find it would be unfair to consider evidence when I am not satisfied the Landlord has seen it or could have responded to it at the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the Tenant was very difficult to hear throughout the hearing due to a poor telephone connection. Numerous times throughout the hearing I had to stop the Tenant to tell him that I could not hear or understand what he was saying. I also had to repeat questions and clarify answers throughout the hearing. I note that these hearings are held by telephone conference and parties are expected to be available at a phone that works with an adequate phone connection throughout the hearing.

Issues to be Decided

Landlord's Application:

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started February 15, 2014 and was a month-to-month tenancy. The parties agreed rent was \$2,200.00 per month. Rent was due on the first day of each month. A \$1,000.00 security deposit and \$200.00 pet damage deposit were paid.

The Landlord sought to keep the security and pet damage deposits.

The Tenant testified that he vacated the rental unit by January 19 or 20, 2021.

The Landlord sought unpaid rent for October of 2020 to January of 2021.

The Tenant agreed rent for October of 2020 to January of 2021 was not paid to the Landlord.

I outlined the six reasons tenants can withhold rent and asked the Tenant about these.

In relation to emergency repairs, the Tenant testified that he paid for the following repairs, provided a written account of the cost to the Landlord and asked the Landlord for reimbursement:

- Time and labour putting in a new set of stairs to the backyard;
- The water tank;
- Outside water taps;
- A drain in the basement;
- Water leaks in the main water line coming into the rental unit;
- Replaced the dishwasher; and
- Put up or repaired a fence.

The Tenant also testified that the Landlord agreed to the Tenant withholding \$200.00 of rent during the pandemic.

The Landlord testified that she paid for all repairs during the tenancy, other than for the Tenant's time and labour in relation to the stairs to the backyard.

The Landlord denied she agreed to the Tenant withholding \$200.00 of rent during the pandemic.

Analysis

I have considered the full amount of outstanding rent sought by the Landlord pursuant to rule 4.2 of the Rules which states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Section 7 of the *Act* states:

7 (1) If a...tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying...tenant must compensate the [landlord] for damage or loss that results.

Section 26(1) of the *Act* states:

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.

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

Based on the agreement of the parties and the tenancy agreement, I am satisfied rent was \$2,200.00 per month due on the first day of each month pursuant to the tenancy agreement.

Based on the agreement of the parties, I am satisfied the Tenant did not pay rent for October of 2020 to January of 2021.

The Tenant only provided two reasons for withholding rent that could be authorized under the *Act* being repairs and that the Landlord consented to the Tenant withholding rent.

In relation to repairs, the Tenant was only entitled to withhold rent for emergency repairs. What constitutes an emergency repair is set out in section 33(1) of the *Act*. Section 33 of the *Act* states in part:

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,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property...

(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);
- (c) the amounts represent more than a reasonable cost for the repairs;
- (d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(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.

The only repairs the Tenant referenced that could amount to emergency repairs are the following:

- Repairs to the water tank; and
- Water leaks in the main water line coming into the rental unit.

The Tenant testified that he paid for the above, provided an account to the Landlord and asked the Landlord for reimbursement. The Landlord testified that she paid for all repairs during the tenancy, other than in relation to the stairs.

There is no documentary evidence before me showing the Tenant paid for the stated repairs, provided an account to the Landlord or asked the Landlord for reimbursement in relation to these. Nor is there documentary evidence before me showing the Landlord

refused to pay for amounts requested. In the circumstances, I am not satisfied section 33 of the *Act* applies and am not satisfied the Tenant had authority under section 33 of the *Act* to withhold rent.

The Tenant testified that the Landlord consented to him withholding rent during the pandemic. The Landlord denied this. There is no evidence before me to support the Tenant's testimony. I would expect an agreement to withhold rent to be in writing given the importance of paying rent in a tenancy. I am not satisfied the Landlord consented to the Tenant withholding rent and am not satisfied the Tenant was entitled to withhold rent on this basis.

Given the above, I am satisfied the Tenant failed to pay rent for October of 2020 to January of 2021 and that the Tenant did not have authority under the *Act* to withhold rent. Therefore, I am satisfied the Tenant owes the Landlord \$8,800.00 in unpaid rent. I acknowledge that the Tenant vacated the rental unit January 19 or 20, 2021; however, I award the Landlord rent for January given rent was due on the first day of each month and given how late in the month the Tenant vacated the rental unit.

As the Landlord was successful in the Landlord's Application, I award the Landlord reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

The Landlord is entitled to \$8,900.00. The Landlord can keep the security and pet damage deposits towards this amount pursuant to section 72(2) of the *Act*. The Landlord is issued a Monetary Order for the remaining \$7,700.00.

Conclusion

The Landlord is entitled to \$8,900.00. The Landlord can keep the security and pet damage deposits towards this amount. The Landlord is issued a Monetary Order for the remaining \$7,700.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: February 16, 2021

Residential Tenancy Branch