



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement.

The tenant attended the hearing with her daughter to assist with translation and as a witness. An agent for the landlord also attended and all participants gave affirmed testimony. The parties were also given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

At the commencement of the hearing the tenant advised that she has vacated the rental unit and the landlord has possession. Therefore, I dismiss the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for the landlord's failure to eradicate a rodent infestation in the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began on May 1, 2019 and the tenancy ended at the end of August, 2021. Rent in the amount of \$850.00 was payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a storage unit, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The tenant further testified that the tenant has not provided the landlord with a forwarding address in writing because the tenant doesn't have an address and is currently living in her car.

The tenant did not pay rent for April, May, June, July or August, 2021. The tenant attempted to pay but the landlord said that he wouldn't accept any unless he got it all.

During the tenancy the rental unit was infested with mice and rats. When the tenant told the landlord about it, the landlord thought it was funny. The tenant told the landlord to call an exterminator and then she would give the landlord rent money. That was on January 20, 2021, and photographs of rodents and what appears to be rodent feces have been provided for this hearing, although not all of the photographs are very clear.

The tenant gave the landlord \$1,700.00 the same day for December, 2020 and January, 2021 rent. The landlord's record keeping was all messed up, and copies of receipts for rent have been provided as evidence for this hearing. In April, 2021 the landlord wanted 3 months rent, but the tenant was up-to-date. In March, 2021 the tenant wanted to pay rent for April, but the landlord claimed it was for March and refused the money. The landlord did that in December, 2020, counting it as November's rent.

A government Ministry pays the tenant's rent, and only if consented to by the tenant will they pay the landlord direct. The tenant testified that she refused to give that consent and paid cash because the landlord wouldn't complete repairs. The tenant purchased paint herself, and the landlord was supposed to change a window and a blind but never did. When the landlord was aware that the tenant received money from the Ministry, the landlord would ask for the rent, prior to the day rent was due.

The landlord called an exterminator in June, 2021 but did not eliminate them. The tenant has provided a written statement indicating, among other things that the tenant told the landlord that he should close up a wall prior to building another apartment, so

the mice don't stay inside the walls. The landlord didn't do anything about it and closed up the wall and the mice and rats made holes in the walls and completely infested the rental unit. The pest control person put down traps and poison and that helped but at some point, at the end of July or beginning of August, 2021 he stopped coming and the rodents came back and did more damage. They put holes in the walls, and there were feces in the beds, furniture, stove and food. When the tenant and her daughter moved out, they left the furniture there.

The tenant also testified that she asked the landlord for \$2,000.00, but he laughed at her. The tenant's daughter is now living with the tenant's mother, and the tenant is living in her car.

The tenant seeks damages in the amount of \$4,550.00.

The tenant's witness translated for the tenant during the tenant's testimony, including that the landlord paid a worker to pound a nail into the tenant's car tire. The worker told the tenant's witness that they couldn't tell who did it, but if they didn't do it, the landlord would give them a hard time. The landlord would also look into the tenant's daughter's window.

The landlord's agent testified that the landlord did obtain the services of an exterminator and Invoices have been provided for this hearing.

The landlord's agent further testified that the rental property is a farm/orchard setting, and alleges that everything that the tenant and the tenant's daughter has said is convoluted and unsubstantiated, including looking in windows. The landlord got a qualified pest control company to deal with the situation, which continued to July, 2021, but no rent was paid.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but a copy has not been provided by either party for this hearing. The landlord's agent testified that it is signed by the landlord, dated 05/06/21 with an effective date of vacancy of 15/06/21 for unpaid rent in the amount of \$2,550.00 for the last 3 months. A note says that it was posted to the door on 05/06/21.

Rent hasn't been paid, and the tenant testified that she hasn't paid rent for April to August, 2021 which is \$4,250.00. The landlord has not attempted to collect it, but the landlord's agent does not know why; the landlord's agent would view it as a draw. Everything is personal and opinions only, undocumented. The landlord has made an

effort and the landlord's agent recommends to the landlord that this is an issue that happened, and is equal on both sides.

If the tenant provides a forwarding address in writing, the security deposit will have to be dealt with.

Analysis

In order to be successful in a claim for damage or loss, the onus is on the tenant to satisfy the 4-part test:

1. that the tenant suffered damages or a loss;
2. that the damage or loss suffered is a result of the landlord's failure to comply with the law or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate any damage or loss suffered.

A landlord is required by law to provide and maintain rental premises in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, I accept the undisputed testimony of the tenant that she told the landlord about the rodents in January, 2021. The pest control invoices are dated January 7, 2021; February 9, 2021; April 15, 2021; May 21, 2021; June 18, 2021 and July 21, 2021. The first one states that it is a one-year rodent program for interior and exterior traps with monthly service. They also indicate that there was heavy activity of rodents starting with the February 9, 2021 invoice and that 11 mice were caught inside the home. The next invoice shows heavy activity outside but nothing caught inside. The invoices dated May 21, 2021 and June 18, 2021 state that an exterior check was completed only; the tenant was not home. Light activity is noted outside.

I have also reviewed the photographs provided by the tenant and I am satisfied that a rodent infestation existed in the rental unit. The tenant testified that at some point the exterminator stopped attending, and that is evident in the invoices, however the tenant was not at home for at least 2 of the dates that the exterminator was there.

I also accept the undisputed evidence in the tenant's written statement that the tenant told the landlord not to close up a wall until the rodents were eradicated, but the landlord

closed up the wall anyway, and the rodents ate through and entered the rental unit. I agree with the tenant, that it is not funny.

In the circumstances, I am satisfied that the tenant has satisfied the 4-part test, and I grant a monetary order in favour of the tenant in the amount of \$4,550.00.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$4,550.00.

This order is final and binding and may be enforced.

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: September 23, 2021

Residential Tenancy Branch