

DECISION

Introduction

This hearing dealt with cross-applications under the *Residential Tenancy Act* (the Act).

The Tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act;
- an order for the landlord to make repairs to the rental unit under sections 32 and 62 of the Act;
- an order for the landlord to provide services or facilities required by law under section 27 of the Act;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act;
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act;

The Landlord applied for:

- an order of possession based on the 10 Day Notice issued June 20, 2023;
- compensation to recover the money owed for the unpaid rent, and a request to retain the security deposit;
- authorization to recover their filing fee under section 72 of the Act.

Preliminary Matters

The parties agree that they previously entered into a settlement agreement granting the Landlord an order of possession for the rental unit on July 7, 2023, and that the Tenant would not be responsible for rent for July 2023. The file number for that settlement and order is noted on the cover page of this decision.

Since the Tenant vacated the unit on July 7, 2023, they no longer require the relief claimed in their application. I dismiss the Tenant's application in its entirety, without leave to reapply.

The Landlord no longer requires an order of possession. I dismiss that portion of the Landlord's application, without leave to reapply. I will consider the Landlord's claims for unpaid rent, retaining the security deposit, and recovering their filing fee.

Issues to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to their filing fee?

Background and Evidence

The tenancy began on September 1, 2022, with a monthly rent of \$8,000.00 due on the first of each month, with a deposit of \$4,000.00.

The addendum to the tenancy agreement says the Tenant is responsible for all repairs and maintenance. The addendum says the owner agrees to provide one month free rent to compensate the Tenant's work.

The Tenant has not paid any rent under the tenancy agreement for the entire duration of just over ten months. The parties disagree whether the Landlord consented to the Tenant withholding rent.

The Tenant says they did not owe rent while they were waiting for the Landlord to make repairs to the central heating system and hot water. The Tenant says they did not occupy the rental unit, but they made many improvements and repairs to the unit, cleaned the unit, took care of yard maintenance, and had their employee live in the carriage house on the property as a caretaker, paying the Tenant rent of \$1,500.00 per month.

The Landlord agrees the Tenant did not have to pay rent for September 2022, but the Landlord claims they did not agree the Tenant could withhold rent until repairs to the central heating system were complete. The Landlord says the Tenant profited from their use of the rental unit, including through hosting parties, and short-term rentals.

The Tenant submitted their email to the Landlord dated August 28, 2022, explaining the work the Tenant had done and notifying the Landlord that the boiler responsible for hot water and the in-floor heating in the master bedroom was not functioning.

On September 10, 2022, the Tenant explained by email that the boiler system appeared to have been drained and turned off for a long time and now has many leaks. The Tenant informed the Landlord they had not had heat or hot water since the start of tenancy. The Tenant said they spent a great deal of money on repairs and improvements. The Tenant mentions that they are supposed to be in a rent-free period for the repairs to the property, and that they are reaching the limit of what they want to spend to make the place habitable.

On September 16, 2022, the Tenant explains in detail the continued repairs they are making to the property. The Tenant says they are renting the home in “as is” condition, but they still require the Landlord to make certain repairs and pay for garbage removal, and professional services such as an electrician and plumber. The Tenant requests a “proper 30-day rent-free period starting on the day that the home has the essential utilities reinstated. Once the home reaches livable status we will start over again as we were supposed to. 30 days rent free, then the lease starts. *Same as we agreed to, just once the utilities are working* [emphasis added].” The Tenant suggests they act as a caretaker and project manager to make the house marketable for eventual sale.

On September 19, 2022, the Landlord’s agent asked for an estimated time to fix the heating issue. The Landlord indicated they would consider the Tenant’s proposal regarding the free rent period and would like to make an addendum to the tenancy agreement to reflect it. Neither party has provided an addendum to the tenancy agreement outlining an agreement to this effect.

On September 19, 2022, the Tenant emailed the Landlord’s agent to say the longer the repairs take, the more the Tenant will save on rent, and they will put the savings towards improving the property further.

On October 11, 2022, the Tenant requested electric heaters to prevent pipes freezing as the boiler had not yet been repaired or replaced. The Tenant reiterated that they are waiting on the heating repair.

On November 2, 2022, the Tenant said they had been voluntarily repairing the house that was not in a liveable condition while the heat and hot water were not working so they were not able to enjoy the benefit of their work. When asked at the hearing how much they spent on repairs, the Tenant estimated they had spent over \$30,000.00.

In an email dated January 3, 2023, the Landlord’s agent made no indication that any rent was owing by the Tenant and thanked the Tenant for their continued care of the property.

On June 12, 2023, the parties completed an inspection of the rental property, and the Landlord did not approve of alterations completed by the Tenant. The Landlord then issued two 10 Day Notices for unpaid rent, the first was issued on June 12, 2023, and the second was issued on June 20, 2023.

The Landlord applied for an expedited hearing on June 19, 2023, to end the tenancy due to what the Landlord claimed was a gas leak resulting from the Tenant’s installation of a heat source without permission from the Landlord.

The parties agree that the Tenant vacated the rental unit on July 7, 2023, pursuant to a settlement agreement reached during the expedited hearing.

Analysis

Is the Landlord entitled to unpaid rent?

The Landlord says the Tenant owes rent for October 2022 to June 2023, totalling \$72,000.00. The Tenant says the Landlord agreed the Tenant could withhold rent while waiting for repairs to the heating system.

I find the Landlord did not issue a 10 Day Notice for unpaid rent until June 2023 after a disagreement with the Tenant regarding alterations to the rental property. If the Landlord had not agreed to the Tenant withholding rent, I find it likely the Landlord would have served a 10 Day Notice many months prior.

Based on the length of time the tenancy agreement carried on without notice of unpaid rent from the Landlord, and the email and text messages communications between the parties, I find it more likely than not the parties had an agreement suspending rent payments until the essential services (heating system) for the rental property were functioning.

It is likely placing the responsibility for repairs on the Tenant lead to the failure of the tenancy. The term of the addendum requiring the Tenant to be responsible for all repairs and maintenance is contrary to section 32 of the Act and therefore not enforceable. Under section 5 of the Act, the parties cannot contract out of the Act.

Under section 1 of the Act, "tenancy agreement" means an agreement, whether written or oral, express or implied...". I find the agreement between the parties regarding suspension of rent payments, which was implied based on the evidence provided, qualifies as an amendment to the tenancy agreement, under section 1 of the Act.

Even if the Tenant made the agreement regarding suspending rent payments with the Landlord's agent AL, rather than the owner of the rental property, the Landlord has not provided any evidence that the Landlord's agent did not have the authority to enter into such an agreement.

Therefore, I dismiss the Landlord's claim for unpaid rent, without leave to reapply.

Is the Landlord entitled to retain the security deposit?

As I have dismissed the Landlord's claim for compensation for unpaid rent, I find the parties must deal with the security deposit in accordance with section 38 of the Act.

I dismiss the Landlord's application to retain the deposit in relation to unpaid rent, without leave to reapply.

Is the Landlord entitled to their filing fee?

As the Landlord was not successful, I dismiss their application to recover the filing fee, without leave to reapply.

Conclusion

I dismiss the Tenant's application in its entirety, without leave to reapply.

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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 20, 2023

Residential Tenancy Branch