



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes:

OPB, MT, CNC, MNR, MNDC, OLC, RP, PSF, LRE, AAT, LAT, RR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order of possession pursuant to Section 55;
- A monetary order for the recovery of the filing fee, pursuant to Section 72.

The tenant applied for the following:

- An order for more time to make an application to dispute the notice to end tenancy, pursuant to Section 66;
- An order to cancel the notice to end tenancy for cause, pursuant to Section 47;
- An monetary order for the cost of emergency repairs pursuant to Section 67;
- An order to seek the landlord's action to make repairs, pursuant to Section 32;
- An order for the landlord to comply with the Act, pursuant to Section 62;
- An order to seek landlord's action in providing facilities required by law and to reduce rent for repairs, pursuant to Section 65;
- An order to suspend the landlord's right to enter the rental unit and authorize the tenant to change the locks, pursuant to Section 70.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the landlord entitled to an order of possession for cause and to recover the fee to file this application?

Is the tenant entitled to more time to apply to dispute the notice to end tenancy?

Is the tenant entitled to a monetary order for the cost of repairs and compensation under the Act?

Does the tenant have reason to change locks to the rental unit and to request a rent reduction?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on November 01, 2008. A move in inspection was conducted on October 29, 2008. The report indicated that the door of the wood stove was cracked. The landlord cautioned the tenant about using the wood stove prior to repair. During the walk through, the landlord advised the tenant about a suite that was locked for landlord use and was not available to the tenant.

The tenant stated that the tenant received the notice to end tenancy on December 25, 2008 and not on December 16, 2008 as stated by the landlord. The tenant testified that on November 28, 2008, there was a beeping sound coming from the locked area of the rental unit and the tenant broke the lock open to check it out. The tenant did not contact the landlord to report the problem, but called a plumbing company to fix the problem and advised the landlord about the service call on December 01, 2008. The plumber recommended that the wood stove not be used as it was not installed to code. The tenant stated that the landlord has not provided the tenant with a dryer as stated on the tenancy agreement and hence the tenant had incurred expenses to visit the laundromat. The tenant stated that the locked suite in the rental unit contained dangerous material and was not in keeping with the City by laws. The tenant applied for compensation in the amount of \$7441.75 which includes the plumber's invoice of \$241.75.

The landlord stated that the landlord had paid the plumber's invoice and served the tenant with a written notice to cease using the wood stove until the repairs were done. The landlord made arrangements for the wood stove to be repaired and informed the tenant of the appointment. However, when the repair person showed up, the tenant did

not allow him access. The tenant stated that the stove door was hot from use and could not be fixed at the time the repair person attended the call. The landlord submitted into evidence photographs taken on December 14, 2008 to indicate that the tenant was using the wood stove. The landlord also stated that two arrangements were made for the delivery of the dryer and both were cancelled due to the non cooperation of the tenant.

The one month notice to end tenancy, dated December 16, 2008 was served on the tenant on December 16, 2008, by posting it on the tenant's front door. The witness for the landlord testified to confirm the service of this notice. The tenant applied to dispute this notice on January 07, 2009. The tenant is currently in occupation of the suite. The landlord is applying for an order of possession and a monetary order for the recovery of the filing fee.

Analysis

Based on the sworn testimony of both parties, I find that the notice to end tenancy for cause was posted on the front door of the tenant on December 16, 2008. Pursuant to Section 90 (c) this notice is deemed to be received on the third day after it is posted. Accordingly, the tenant is deemed to have received this notice on December 19, 2008. The tenant applied for dispute resolution on January 08, 2009. Pursuant to section 47(4) of the *Residential Tenancy Act*, a tenant may dispute a notice under this section by making an application for dispute resolution within ten days after the date the tenant receives the notice. Section 47(5) states that if a tenant does not make an application for dispute resolution within ten days after receiving the notice to end tenancy, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. In this case, the tenant stated that the notice was received on December 25, 2008. Even if the tenant is deemed to have received this notice on December 25, 2008, the tenant did not dispute the notice to end tenancy within the stipulated time of ten days and hence pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

The tenant has made a claim for compensation in the amount of 7441.75 which includes the plumber's invoice of \$241.75. This invoice was paid by the landlord and hence the tenant is claiming \$7200.00 for loss of use of the wood stove and dryer.

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Tenant's claim:

I find that the tenant did not submit into evidence any documentation to support the tenant's claim. I find that the tenant's claim in the amount of \$7200.00.00 does not meet all the components of the above test; hence this portion of the tenants claim is dismissed. The tenant's claim for a rent reduction, repairs to the suite, authority to change locks, provide services and suspend the landlord's right to enter the rental unit is moot as the landlord has been granted an order of possession and the tenancy will end.

Landlord's claim:

I find that the landlord has proven the landlord's case and is entitled to an order of possession and the recovery of the filing fee.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of **\$50.00**.

The tenant's application is dismissed in its entirety.

Dated February 05, 2009.

Dispute Resolution Officer