



Dispute Resolution Services

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

Decision

Dispute Codes: MT, CNL, PSF, O, FF

Introduction

This hearing dealt with an application from the tenant for more time to make application to cancel a notice to end tenancy, cancellation of a notice to end tenancy itself, an order requiring the landlord to provide certain services, non-specific monetary compensation, and recovery of the filing fee for this application. Both parties, including the agent / translator for the tenant, participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the tenant is entitled to more time to make application to cancel a notice to end tenancy, cancellation of a notice to end tenancy itself, an order requiring the landlord to provide certain services, non-specific monetary compensation and recovery of the filing fee.

Background and Evidence

There is no written residential tenancy agreement for this month-to-month tenancy which began on or around January 1, 2002. Rent in the amount of \$475.00 was payable in advance on the first day of each month. The parties disagree as to what amount of security deposit was paid at the outset of tenancy: the tenant claims it was \$200.00, while the landlord states it was \$100.00.

The landlord issued a 2 month notice to end tenancy for landlord's use of property dated January 2, 2009. The date shown on the notice by when the tenant must vacate the unit is March 2, 2009. The landlord claims he changed his mind about taking over the unit for his own use because he could not afford it. Accordingly, he states that on

February 1, 2009 he offered the tenant an opportunity to continue to rent. The landlord states the tenant declined the offer but said he would only stay in the unit until February 21, 2009. As a result of his intention to stay in the unit for only a portion of the month, the tenant limited his payment of rent to \$375.00, withholding payment of \$100.00. In spite of this, the landlord states the tenant remained in the unit until February 28, 2009. The landlord states he repaid the tenant his \$100.00 security deposit when the tenant left the unit.

The tenant claimed that toward the end of tenancy the landlord harassed him by shutting off the power and water supply. The landlord claims he engaged in no such harassment and responded in a timely manner to have all necessary repairs made.

Analysis

In order to decide the issues in this dispute, I have carefully weighed the testimony and documentary evidence presented by the parties. A test for assessing credibility is set out in *Faryna v. Chorny* [1952] 2 D.L.R. 354 (BCCA). In part, the test reads as follows:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject the story to an examination of its consistency with the probabilities that surround the story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize in that place and those circumstances...(pp.356-357).

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated January 2, 2009. Related to this notice, section 49(8) of the Act provides as follows:

49(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

The tenant did not dispute the notice within 15 days after receiving it and did not provide any reasons for not doing so. The tenant is therefore conclusively presumed under section 49(9) of the Act to have accepted that the tenancy ended on the effective date of the notice which was March 2, 2009. Pursuant to all of the above information, I dismiss the tenant's application for more time to make an application to cancel the notice and I dismiss the tenant's application for cancellation of the notice itself. Further to all of this and as earlier stated, the tenant has now vacated the unit.

Notwithstanding that the landlord may have changed his mind about taking over the unit for his own use, -I find that the tenant vacated the unit in response to the landlord's 2 month notice. Related to this finding, section 51(1) of the Act provides as follows:

51(1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Pursuant to this statutory provision, I find that the tenant is therefore entitled to recover the equivalent of one month's rent in the amount of \$475.00.

As for the amount of the original security deposit, on a balance of probabilities I find that it was \$200.00. I find that at the end of tenancy the landlord repaid only \$100.00 of the security deposit because of the tenant's earlier withholding of \$100.00 from February's rent. In the result, I find that the tenant is entitled to reimbursement of an additional \$100.00 of the security deposit plus interest on the original amount of the security deposit.

As for harassment by the landlord which allegedly took the form of withholding or limiting access to certain utilities, I find there is insufficient evidence for me to make a finding in favour of the tenant. Further, as the tenant has now vacated the unit, the

tenant's application for an order that the landlord restore any such services is moot. While the tenant indicated through his agent / translator that he had witnesses who could speak to various aspects of his testimony, he acknowledged that none were presently available and waiting to testify.

As for the monetary order, I find that the tenant has established a claim of \$632.08. This is comprised of the equivalent of one month's rent of \$475.00 for February 2009, reimbursement of the balance of \$100.00 of the security deposit, interest on the original amount of the security deposit in the amount of \$7.08, and recovery of the \$50.00 filing fee for this application. I therefore grant the tenant a monetary order under section 67 of the Act for \$632.08.

Conclusion

I hereby grant the tenant a monetary order under section 67 of the Act for **\$632.08**. This order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: April 15, 2009

Dispute Resolution Officer