



Dispute Resolution Services

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

DECISION

Dispute Codes:

CNC, MNDC, OLC, ERP, RP, PSF, OPC, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant filed two (2) separate, but near identical applications one week apart. The second application differed in that it included a request to Cancel a recent One Month Notice to end for Cause issued by the landlord on April 20, 2009. The tenant's application also includes for the landlord to generally Comply with the Act, to make repairs to the unit: repair the unit's sink plumbing, to make emergency repairs for health or safety: repair the unit's sink plumbing, and to provide services or facilities required by law: delivery of mail to the tenant. Also, the tenant seeks a monetary order for up to \$2770 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement: for alleged damage to tenant's personal property due to water ingress from an open stand pipe under the sink of the unit – the same sink referenced in the repair claims.

The landlord seeks an Order of Possession following the issuance of a One Month notice for cause (the notice), with the reason stated as: *significantly interfered with or unreasonably disturbed another occupant or the landlord*, as well as recovery of the filing fee for this application. Regardless of the fact the landlord's seeks an order of possession prematurely; the landlord also seeks such an order by verbal request in the tenant's application as the tenant requests to cancel the Notice. The landlord seeks an Order of Possession effective May 30, 2009 in the event the Notice is upheld.

Both the tenant and the landlord appeared at the hearing and fully participated in the hearing, each giving affirmed testimony.

At the outset of the hearing the landlord advised that he had not received any of the tenant's evidence as received and described by the hearing files on May 01, 2009. The tenant strongly disagreed saying that he personally served the landlord on April 28, 2009 and had witnesses to this effect providing signed testimonials.

Issue(s) to be Decided

Was the landlord properly served documents or submissions to be relied upon in this hearing?

Should the One Month Notice to end Tenancy dated April 20, 2009 be cancelled?

Should the landlord be ordered to make repairs to the rental unit?

Should the landlord be ordered to provide secure mail delivery to the tenant?

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Act?

If so established, did the tenant take reasonable steps to mitigate the loss?

Is the tenant entitled to the monetary amount claimed?

Background and Evidence

As to the landlord's request seeking an Order of Possession based on the One Month's notice for cause. The landlord's seeks such an order primarily because he finds the tenant to generally be a difficult person, with an attitude, "not appreciated at our premises, interfering with the operation of the building, and, his disturbing behaviour to other tenants". The tenant is generally described by the landlord as demanding.

The tenant's two applications, one week apart, does not add clarity to the contrasting evidence presented by the tenant and the landlord.

During the hearing and under oath, the landlord vehemently denied receiving any evidence from the tenant in respect to the tenant's claims on application, including the tenant's claim for damage and loss to personal property. However, immediately after the hearing I was advised by FAX from the landlord that he had indeed received the referenced material one and one half hour before the hearing, and that the landlord had

determined it too late for these proceedings. The hearing was clearly misled and this decision maker was not afforded an opportunity to determine the admissibility of the tenant's submissions into evidence. The tenant's sworn testimony and, in part, the evidence in question, indicate the landlord was handed the submissions for this hearing on April 28, 2009.

Credibility in this hearing was a key issue. On reflection of the facts before me, my preliminary finding is that I prefer the tenant's evidence respecting the landlord receiving the tenant's claim particulars on April 28, 2009. I find the landlord received the tenant's submissions in time for the landlord to have been afforded a sufficient response and defence to the tenant's allegations and claims for compensation. I find the evidence submission by the tenant dated April 26, 2009 and received by RTB, as received by the landlord and admissible into evidence. Regardless, the landlord strongly disputes the majority, if not all, of the tenant's allegations, dates, claims of loss, and occurrences purported by the tenant.

In regards to the tenant's claim for an order for repairs to the suite's plumbing / sink, I was assured in the hearing by the parties, as well as by notation in the evidence by the City's Property Use Inspector that the sink / plumbing repairs to room #235 (tenant's suite) have been made and the room, "is ok" as of April 26, 2009. Both parties agree that a course of renovations in the building has been occurring for some time and that remediation to other plumbing related facilities such as the tenant's common shower and toilet area have occurred.

The tenant claims the landlord is not redirecting his mail to him when it comes into the building via the front desk. Tenant claims the landlord and his staff is conspiring to deprive him of his mail. This portion of the tenant's claim is not supported further than by the tenant's own suspicions.

I have carefully gone over the submissions of both parties as well as their affirmed testimony. The tenant's documentary submission provides a signed testimonial by a previous handyman to the landlord which states that on March 24, 2009 he personally observed while alongside the tenant, that the sink's pipe was leaking; when, it burst. Water flooded the floor and the tenant's possessions were splashed and ruined. "The water poured out in large quantity and could not be stopped and eventually damaged (the tenant's) electronic grill, stereo, books, laptop, clothing and boxes as well. I tested

(the tenant's) IBM ThinkPad laptop, grill and stereo and they failed to work". This individual then goes on to provide that shortly after the pipe burst he quite the landlord's employment. He also claims to have witnessed the tenant serve the landlord papers for this hearing, and all evidence, on April 28, 2009.

In contrast to this testimonial, the tenant provided affirmed testimony in the hearing that he (the tenant) was not there when water from the sink pipe caused damage to his property – that he was away and later returned to find his belongings ruined.

Regardless, the tenant provides another very similar signed testimonial from another individual on the same day of March 24, 2009 that he came to see the tenant's damage to his belongings, tried to help the tenant repair his computer but it failed to work. This individual also witnessed the tenant serve the landlord hearing papers on April 28, 2009.

The tenant provides a third signed testimonial from a visitor to the tenant's suite the next day on March 25, 2009. this individual claims," I was shocked that the water continuously poured out of the pipe and flooded the floor AGAIN and AGAIN, I WITNESSED that it completely damaged (the tenant's) belongings. I saw that (the tenant's) clothing, boxes, IBM THINKPAD, Sony stereo, grill, books are all destroyed. This individual also purports to have witnessed the tenant serve the landlord hearing papers on April 28, 2009.

The tenant also provided 3 photographs. One of the sink with the trap pipe removed, one of a clogged toilet, and one of a pail below the sink without the trap pipe.

In the hearing, the landlord denied having any prior knowledge of the tenant's claim of damaged property from water damage in the suite. His first knowledge of this claim was in the hearing and he denies the validity of tenant's claims. However, the landlord cites a statement he submitted from an employee and resident of the building in which the tenant is reported to have threatened to sue the building and the landlord representative, and that this is the extent of any prior knowledge of the tenant's damage claims.

Analysis

When a tenant applies to cancel a Notice to end a Tenancy for Cause, the burden of proof shifts to the landlord as to why the Notice was issued. I find the landlord's evidence in this regard fails to provide sufficient cause to end the tenancy.

I find the tenant has not *significantly* interfered with or unreasonably disturbed another occupant or the landlord. Therefore, the landlord's Notice is cancelled with the effect that it is null and void and the tenancy, for now, continues. The tenant should not interpret this finding as an endorsement for continued disruptive behaviour toward the landlord or other tenants. The tenant came perilously close to providing sufficient cause for eviction. Should this conduct continue the landlord can serve another Notice to End Tenancy for Cause. The landlord's application is hereby dismissed.

I decline to make any order for the landlord to carry out repairs as it is supported by the testimony in evidence that the repairs have been accomplished to, at least, the satisfaction of the responsible department for the City. This portion of the tenant's claim is hereby dismissed.

I decline to make an order for the landlord to provide a service or facility required by law: in this matter, mail service. The tenant has not advanced any evidence supporting the necessity for such an order. This portion of the tenant's claim is hereby dismissed.

As to the tenant's monetary claim for loss. Previously stated, the burden of proving loss and damage rests on the claimant (tenant). The tenant must establish, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss?

All the tenant's testimonials appear to be similarly written, using the same wording, are all formatted identically, with same font, and, all say the same things. They are, however, individually signed. As a group these testimonials appear contrived and are poor evidence. I can only assign marginal credibility to them, especially in light of the tenant's verbal testimony that he was not present when the water damage occurred.

The tenant provides a 46 item list of property he claims was damaged by water from the sink pipe. He also provides an invoice for an alleged replacement laptop in the amount of \$1029.

As the tenant was able to provide 3 photographs of the sink and one toilet, I find the tenant could have also provided photographs in support of the alleged damage to property, perhaps photos of the damaged property, the damaged laptop, water damaged books or boxes, the new laptop, or other views related to the water damage. A list of items without basis for the valuations is grossly inadequate for an arbitrator to base fair compensation. The tenant's evidence does not support he took reasonable steps to mitigate or minimize the claimed loss.

On the balance of probabilities, and preponderance of all the evidence, I find the tenant's evidence as to the events and accounts forwarded in support of damage to the tenant's property is not sufficiently credible for me to form a basis of entitlement to compensation. I hereby dismiss this portion of the tenant's application for a monetary order.

Conclusion

The tenant's applications (2) are dismissed. The landlord's application is dismissed.

The tenancy, for now, continues.

Dated May 08, 2009