

DECISION

Dispute Codes DRI CNE MNDC FF

Preliminary Issues

Counsel for the Landlord appeared and requested an adjournment as the Landlord is currently on a plane travelling back from a business meeting. Counsel argued that the Landlord had to attend an emergency board meeting and could not reschedule this meeting. Counsel advised that he had requested the Tenants' agreement to the adjournment and they refused.

I note that the Landlord was advised of the date and time of today's hearing several weeks ago and while taking into consideration he had to attend a board meeting I note that his Counsel has stated that he is not able to attend the hearing because he is "currently on a plane coming home." The *Residential Tenancy Branch Rules of Procedure* # 6.2 provides for an agent to represent the respondent at the hearing to request the proceeding to be rescheduled for circumstances that are beyond the party's control. In this case I find that attendance at today's hearing was within the Landlord's control given that the hearing was being held by telephone conference and the Landlord could have arranged his flight for a time that would have allowed the Landlord to dial into the hearing from abroad. Based on the aforementioned the adjournment request was denied and the hearing proceeded as scheduled.

The Tenants filed an amended application with the *Residential Tenancy Branch (RTB)* on October 26, 2009 to include a request to cancel a notice to end tenancy. Service of the amended application was conducted in person to the Landlord's Counsel's office and handed to the Counsel's receptionist on October 27, 2009 and a copy delivered through the mail slot at the Landlord's residence on October 26, 2009.

The Landlord's Counsel argued that he does not have a copy of the amended application in his file.

In light of the opposing testimony I accept that the Tenant has filed an amended application and served the Landlord with a copy of the amendment in accordance with section 89 of the *Residential Tenancy Act* (Act) and will proceed with the hearing on the amended application.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to dispute an additional rent increase, to cancel a notice to end tenancy for end of employment, to obtain a Monetary Order for money owed or compensation for loss under the Act, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via courier on September 24, 2009. The amended application was delivered to the Landlord's address on October 26, 2009 and hand delivered to the Landlord's Counsel's office on October 27, 2009.

The Landlord's Counsel, the Female Tenant, the Male Tenant, and an interpreter for the Tenants appeared, acknowledged receipt of evidence submitted by the other, provided verbal testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Are the Tenants entitled to Orders under sections 43, 48, 67, and 72 of the *Residential Tenancy Act*?

Is the Landlord entitled to an Order of Possession under section 48 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony provided that the fixed term tenancy began on December 2, 2004 switching over to a month to month tenancy after December 31, 2005. The Tenants paid a security deposit of \$475.00 on December 2, 2004 and up until December 1, 2008 rent was payable on the first of each month in the amount of \$950.00.

All parties confirmed that on January 1, 2009 the Landlord increased the rent to \$1,450.00, without written notification of the rent increase, and the Tenant accepted a verbal offer of employment from the Landlord. The initial verbal employment agreement consisted of the Landlord compensating the Tenant in the amount of \$300.00 per month in exchange for the Tenant providing services as a resident caretaker for the Landlord.

The Male Tenant testified that for the months of January, February, March, April, May, and June, 2009 the Tenant deducted his \$300.00 monthly wage from his rent payment of \$1,450.00 and issuing monthly rent cheques to the Landlord in the amount of \$1,150.00.

The Tenant testified that the employment changed sometime in June 2009 whereby it was agreed by all parties that the Tenant would take on more duties, including cutting the grass and would be compensated in the amount of \$10.00 per hour. The Tenant argued that he worked 110 hours doing yard work and deducted \$1,100.00 off of his July 2009 rent. The Tenant stated that this upset the Landlord and a discussion followed whereby the Tenant agreed to accept \$600.00 and began to work less hours.

The Tenant testified that the Landlord changed his mind several times dropping the wage from \$600.00 down to \$500.00 and that the Landlord was expecting the same amount of work to be completed as when the Tenant had worked 110 hours. The Tenant argued that the discussions broke down and the Tenant stopped performing work duties for the Landlord as of August 4, 2009.

Counsel for the Landlord advised that the Landlord's property originally consisted of one home, the rental unit, and in 2007 the Landlord began to develop his new house.

Counsel advised that the municipality would not allow two residences on the property unless the rental unit was occupied by a "caretaker"; this is why the Landlord entered into the employment agreement with the Tenant, hiring him as the Landlord's caretaker.

Counsel confirmed that the employment contract began to break down between the Landlord and Tenant in approximately July 2009 as the parties began to dispute what work was to be done and the total number of hours to be paid for the work.

Counsel argued that he was retained by the Landlord on October 19, 2009 to represent the Landlord for this proceeding and assist the Landlord in complying with the municipal regulations in order to retain both houses on the property. Counsel advised that on October 22, 2009 the Tenant was served with a letter confirming in writing, the end of the Tenant's employment with the Landlord and a 1 Month Notice to End Tenancy for end of employment effective November 30, 2009. Counsel argued that his client has no choice but to follow through with the notice to end tenancy and seek an Order of Possession because the residence must be occupied by a caretaker to comply with municipal by-laws.

The Tenant testified that he received the letter ending his employment and the 1 Month Notice to End Tenancy. The Tenant is seeking a monetary claim to refund the amount of illegal rent increase for the eleven months of January through to November 2009 in the amount of \$500.00 per month; an order to have the Landlord comply with the act for any future rent increases; and an order to cancel the 1 month notice to end tenancy.

Analysis

I find that in order to justify payment of damages or loss under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant

pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The evidence and testimony before me confirms that the Landlord increased the Tenant's rent effective January 1, 2009 from \$950.00 to \$1,450.00, without advanced written notice to the Tenant. This increase represents an increase of almost 52.75% in contravention of section 43 of the *Act* and section 22 of the *Residential Tenancy Regulations (Regulations)* which provide for an annual rent increase in the amount of 3.7% for 2009; providing the Landlord provides three months written notice to the Tenant, on the approved *Residential Tenancy Branch (RTB)* form.

I note that there is evidence before me that the Tenant deducted his monthly wages of \$300.00 from his rent payments from January 2009 through to June 2009 and additional deductions were made from future rent payments. I find that these deductions were

payment of “wages” and are separate from the monthly rent being charged, regardless of verbal agreements, entered into by the Landlord and Tenant on how payments would be made or collected. Based on the evidence before me the Rent was \$1,450.00 per month effective January 1, 2009.

Based on the aforementioned, I find that the Tenant has proven the test for damage or loss, as listed above, and in accordance with section 43(5) of the Act, I hereby approve the Tenant’s claim, for the recovery of a rent increase that does not comply with the Act, in the amount of \$5,500.00 (11 x \$500.00).

The testimony supports that the Landlord is required, under municipal by-law, to have a caretaker reside in one of the houses located on the Landlord’s property. Both parties testified that the Tenant entered into an employment agreement with the Landlord, to maintain and oversee the property, as a caretaker, as of January 2009 and that sometime in 2007 a representative for the Landlord asked the Tenant to be the caretaker of the Landlord’s property. The evidence supports that the Tenant ended the employment agreement on August 4, 2009, that the Tenant was served formal written notice of the end of employment agreement dated October 19, 2009, and a 1 Month Notice to End Tenancy for end of employment effective November 30, 2009.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms can not be enforced. In this case the evidence and testimony support that the Tenants entered into an employment contract with the Landlord, that the Tenants were advised as early as 2007 that a caretaker needed to reside on the property, and the employment contract has now ended. Based on the aforementioned, I find that the Landlord has complied with section 48(1) when issuing the 1 Month Notice to End Tenancy for end of employment, and I hereby grant the Landlord an Order of Possession effective November 30, 2009.

As the Tenants have been partially successful in their claim, I find that they are entitled to recover the \$50.00 filing fee from the Landlord.

Monetary Order – I find that the Tenants are entitled to a monetary claim, and that the Tenants are entitled to recover the filing fee from the Landlord as follows:

Recovery of non-compliant rent increase (\$500.00 x 11)	\$5,500.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$5,550.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **November 30, 2009 after service on the Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Tenants' monetary claim. A copy of the Tenants' decision will be accompanied by a Monetary Order for \$5,550.00. The order must be served on the Landlord and is enforceable through the Provincial Court and enforced as an order of that Court.

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: November 09, 2009.

Dispute Resolution Officer