Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNQ, MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant filed his original Application on July 13, 2010, requesting an order to cancel a two month Notice to End Tenancy issued by the Landlord, as it was alleged in the Notice that the Tenant no longer qualified for subsidized housing.

On August 4, 2010, the Tenant amended his Application to include a request that an issue involving a fire alarm inspection be resolved at the hearing.

On August 25, 2010, the Landlord filed an Application requesting a monetary order arising from the issue of the fire alarm inspection in response to the Tenant's Amended Application to include this issue.

Following this, on August 27, 2010, the Tenant amended his Application to include a request for a monetary order against the Landlord for storage costs.

Both parties appeared at the hearing, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I note that the Tenant submitted evidence late in this matter, however, I have reviewed this evidence.

In order to have all matters in dispute between the parties resolved at one hearing, I have also allowed the Tenant to amend his Application to include the request for a monetary order arising from the storage fees.

I have considered all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Lastly, prior to the hearing, the parties resolved the issue of the two month Notice to End Tenancy and the tenancy has continued. Therefore, this one issue from the Tenant's original Application is dealt with in a limited fashion in this Decision.

Issues(s) to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?

2. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The first issue involves the dispute over fire alarm testing.

The Agents for the Landlord testified and submitted evidence that on February 25, 2010, the Tenant, and other residents of the residential property where the rental unit is located, received a Notice of Entry for March 3, 2010, (the "Alarm Notice"). The Agents further testified that copies of the Alarm Notice were posted on bulletin boards and other common areas in the building.

The Alarm Notice informs the Tenant and other residents that on March 3, 2010, the fire alarm components will be inspected and tested inside all units and the main fire alarm will be tested. The Alarm Notice includes the following, "During this test, you will hear the alarm bells ring for a short period of time, possibly on several occasions."

The Landlord submitted that the testing was required under municipal and provincial laws, and to comply with its obligations under the Act. According to the submissions of the Landlord, this same Alarm Notice has been used for at least four years.

The parties agree that on March 3, 2010, when an Agent for the Landlord and the contracted alarm technician attended at the rental unit for the purpose of the testing the fire alarm system, the Tenant refused access to the unit.

The Agent for the Landlord who attended the rental unit testified that when the Tenant opened the door to the rental unit he was extremely upset and yelling. The Agent testified that the Tenant did not want the Agent or technician to enter the rental unit.

The Agent testified that he explained to the Tenant that he and the alarm technician had a legal right to enter the rental unit as the Alarm Notice had been issued to him. He testified that he explained to the Tenant that the testing had to be done.

The Agent testified that he told the Tenant that if he did not let the Agent and technician in, "... they would have to come back and it would cost him." The Agent testified that the Tenant then stepped in front of the technician and Agent and refused to allow them to enter the rental unit.

The Tenant, who is self employed and works from home, faxed a letter to the Landlord on March 4, 2010, explaining his actions on March 3, 2010.

The Tenant writes that the, "... intensity of the repeated and unpredictable high-pitched alarm was so unbearable as to induce shock and potential hearing damage in myself and other tenants." [Reproduced as written.] The Tenant provides suggestions to the Landlord how future fire alarm testing should be conducted, and then stipulates conditions on which he will allow future testing in the rental unit.

The Landlord replied to the Tenant on March 9, 2010, gave the Tenant a second Notice of Entry, and notified him that he would be charged **$99.75** for this call back for the technician to check the fire alarm system in the rental unit.

Following the testimony of the Agent, the Tenant testified that he was astounded by what the Agent for the Landlord had testified to regarding the events on March 3, 2010, and alleged the Agent was lying.

The Tenant agreed he was upset due to the noise of the alarm testing and he spoke in a "definite voice". He testified he was in a state of shock due to the alarm noise. The Tenant further testified that his hearing had been damaged by the alarms. He testified that the Agent had told him that the Landlord had posted a legal notice for entry and asked if the Tenant did not care if he was out of compliance.

In written submissions the Tenant explains the Alarm Notice given by the Landlord was inadequate and he suffered, "... nervous shock, nuisance, and loss of quiet enjoyment of my home due to the inadequacy of the notice." The Tenant further writes, "I cannot over-emphasise the assault on my nerves caused by the testing...", and, "It raised my blood pressure and gave me a headache. My nerves were shaken and my ears started to ring. It was totally unbearable. If this procedure was used in a prison camp, it would be regarded as a form of torture." [Reproduced as written.]

Lastly, the Tenant argued that since the Landlord is affiliated with the provincial government, in that it provides subsidized housing for low-income seniors, it should be held to a higher duty of care in regard to the adequacy of the Alarm Notice.

The second issue involves the dispute over the costs of a storage locker paid for by the Tenant.

The Tenant was served on July 13, 2010, with a two month Notice to End Tenancy by the Landlord, with the reason being given that the Tenant no longer qualified for subsidized housing (the "Eviction Notice"). I note no copy of the Eviction Notice was provided in evidence by the Tenant, although his Application was originally filed to request the Eviction Notice be cancelled.

According to the testimony of the Tenant, he rented a storage locker on July 17, 2010, since he would not know about the outcome of this hearing for two months and had to have some place to store his belongings if he had to move. The Tenant testified he had already moved some belongings into the storage locker.

The Agents for the Landlord testified that the Tenant had refused to provide the required information in the annual review of income to qualify for subsidized housing. Without the required income information, the Landlord was unable to determine if the Tenant still qualified for subsidized housing and that is why the Eviction Notice was served.

The Tenant testified he did not provide the income information on the application form as he felt it infringed his privacy rights by asking unnecessarily personal questions. He testified this matter was resolved in his favour and that is why the Eviction Notice was withdrawn by the Landlord.

The Tenant further testified he acted out of necessity and prudence, as locker space is all used up by September when the students return to school.

The Tenant concluded by reasserting that the Landlord must be held to a higher duty of care than just issuing a, "...bare notice".

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I dismiss the Application for Dispute Resolution of the Tenant in its entirety. I find the Tenant is the author of his own misfortune in both circumstances.

As to the claim regarding the cost of the fire alarm testing, I accept the testimony of the Agent for the Landlord that the Tenant was warned a return visit would cost the Tenant money.

By his own testimony and evidence, the Tenant declares he was in a state of shock due to the fire alarm testing. While I find it is possible he may not have heard or comprehended this warning issued by the caretaker, it is also just as likely he intentionally ignored the warning. Nonetheless, I accept the Agent's testimony that the Tenant was warned that failing to allow entry would cost him money.

More importantly, the Tenant had no right or authority under the Act to refuse the Landlord or its Agents entry to the rental unit for the purpose of testing the fire alarm. I note the Alarm Notice also implies that residents do not have to be present for the testing to occur. In this instance, I find the Alarm Notice that was provided to the Tenant is fully in accordance with the Act for entry to the unit and sufficiently warns of fire alarm testing.

The Landlord is required under the law to conduct these tests and inspections and has every right to do so, when done in accordance to the Act. I note this alarm testing is of such importance to the safety of all residents that some municipalities have even included provisions in their bylaws that any person who refuses entry for a fire safety inspection must be reported to the local fire department.

I also do not find there is a higher duty of care imposed on this Landlord under the Act to provide the Tenant any different type of notice of fire alarm testing, or to provide more explicit instructions on how the testing will be conducted.

By its very nature, a fire alarm is supposed to be loud and annoying, in order to alert people to escape possible impending danger. If the Tenant is disturbed by fire alarms to the extent he claims, he should have left the rental unit to avoid the testing, or left the unit once the testing began in order to mitigate his alleged symptoms. Regardless, I find the Tenant has provided no medical evidence to support the pain or damage the Tenant claims to have suffered.

I further find the Tenant has no right or authority to prescribe fire alarm testing procedures to the Landlord or to stipulate conditions on the alarm testing in order for the Landlord to access the rental unit. The method of testing is entirely up to the Landlord

and its Agents, as it has to be done in accordance with the applicable laws and regulations. If notice of entry is given in accordance with the Act and the testing is done as required by the applicable laws or regulations, the Landlord has not breached the Act. In addition to the legal requirements, the testing is also a safety benefit for all occupants of the building as it ensures the system is working as intended.

I find the Tenant has breached section 28 of the Act by refusing to allow the Landlord lawful entry. Section 67 of the Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breach of the Act by the Tenant has caused the Landlord to suffer a loss in that there was an additional cost to the Landlord to have the technician return to the rental unit. Therefore, pursuant to section 67 of the Act, I order the Tenant to pay the Landlord **$149.75** in compensation for the $99.75 loss and to recover the $50.00 filing fee for the Application.

As to the Tenant's monetary claim for storage costs, I dismiss this claim for several reasons:

a. I find the Tenant acted prematurely in renting a storage locker;
b. the Tenant testified he is already storing items in the locker and therefore, he has accrued a benefit and not a loss from personal use of this locker;
c. the Tenant would not have been entitled to claim for the storage locker in any event of the outcome of the Eviction Notice;
d. there is insufficient evidence to prove that had the Tenant waited until September there would be no storage lockers available for him; and
e. most importantly, there is no evidence from the Tenant that the Landlord breached the Act causing him this loss.

Conclusion

The Tenant's claims are dismissed.

The Landlord's claims for the cost of a return visit to the rental unit and the return of the filing fee for the Application are allowed.

Lastly, I note that at the end of the hearing, when I was explaining to the Tenant the probable determination I would make in this matter, he became rude and preposterous in his claims. The Tenant accused this Dispute Resolution Officer of being prejudiced towards him, although he could not explain on what ground he made this accusation. I explained to the Tenant that simply because I do not allow his Application does not mean I held any prejudice towards him in this matter.

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 07, 2010.

Dispute Resolution Officer