Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RR, OPR, FF

Introduction

This hearing dealt with cross applications. The tenant applied for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement; and authority to reduce rent. The landlord applied for an Order of Possession for unpaid rent and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and respond to submissions of the other party.

As a preliminary matter, both parties initially confirmed service of documents; however, when the terms of the tenancy agreement came under dispute both parties claimed they had not been served with a copy of the tenancy agreement submitted to the Residential Tenancy Branch by the other party. I found the terms of the tenancy were largely the same except for the duration of the tenancy. Therefore, with respect to findings concerning the terms of tenancy I accepted the parties' undisputed verbal testimony and found the term of the tenancy was month-to-month in absence of clear evidence the duration was for a fixed term.

On a procedural note, the tenant had identified two landlords in making the tenant's application. The tenancy agreements provided by both parties name only one landlord. I do not find sufficient evidence that the other person is the landlord and I amended the tenant's application to remove the other respondent. The other person named by the tenant in herein referred to as the landlord's assistant.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Has the tenant established an entitlement to compensation from the landlord?
3. Is it necessary to issue Orders to the landlord to comply with the Act, regulations or tenancy agreement?
4. Is the tenant entitled to reduce rent payable?

Background and Evidence

I was provided with undisputed testimony as follows. The tenancy commenced June 18, 2010. The tenant paid a $225.00 security deposit. The tenant is required to pay rent of $450.00 on the 1st day of every month. The rental unit is a bedroom with shared access to a kitchen and bathroom on the ground floor of the residential property. Two other bedrooms located on the ground floor are rented to other tenants. On August 2, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent. On August 6, 2010 the tenant obtained a Money Order for the rent owed for August 2010.

The parties were in dispute with respect to the term of the tenancy. The landlord submitted the tenancy was for a fixed term set to expire January 31, 2011 and the tenant would have to vacate on that date. The tenant claimed that it was a month-to-month tenancy.

Notices to End Tenancy

On at least two occasions the landlord testified the 10 Day Notice was served to the tenant in person on August 2, 2010. The tenant stated the Notice was posted on her door on August 2, 2010. I noted that the landlord's Application for Dispute Resolution indicated that the Notice was posted on the door and I asked the landlord to explain this discrepancy. The landlord asserted that a Residential Tenancy Branch staff person advised him to write on the application that he Notice was posted on the tenant's door even though the landlord advised the staff person it was served in person.

Both parties agreed the tenant had provided the landlord with the Money Order for rent owed for August 2010. The landlord submitted that the Money Order incorrectly identifies the landlord and it could not be cashed. The landlord claimed the Money Order was returned to the tenant by posting it on the tenant's door on August 6, 2010. The tenant explained that she is legally blind and that she was given conflicting information by the landlord and the person assisting the landlord with respect to the identity of the landlord. The tenant claimed that the Money Order has not been returned to her and that since it is a Money Order she has already advanced the funds to the financial institution that issued the Money Order. The tenant cannot confirm whether the Money Order has been cashed and if the Money Order has not been cashed then the tenant would require return of the Money Order in order to try to retrieve the funds. I note on the Landlord's Application for Dispute Resolution the landlord did not request compensation for unpaid rent.

The landlord also submitted evidence with respect to a 1 Month Notice to End Tenancy for Cause issued July 23, 2010; however, the landlord did not indicate he was seeking an Order of Possession for cause in making this Application for Dispute Resolution and I do not consider that evidence further.

Tenant's monetary claims

The tenant is seeking compensation from the landlord for the following amounts and reasons.

1. Rent of $675.00 paid for June and July 2010 because the landlord refused to complete the Shelter Information document for the Ministry in order for the tenant to collect the shelter portion of income assistance. Upon enquiry by Ministry staff the landlord refused to divulge the identity of the property owner to Ministry staff.
2. Return of security deposit and key deposit of $225.00 and $20.00 respectively.
3. Compensation to install a closet shelf of $40.00.

4. Cost of eating in restaurants of $300.00 due to a filthy kitchen caused by former tenants of the other bedrooms on the ground floor.
5. Moving in and moving out expenses of $485.00 each.
6. Compensation for stress and grief of $1,000.00.

In response to the tenant's claims the landlord responded as follows. The landlord acknowledged that he refused to sign the Shelter Information document as the tenant had informed him she was self-employed when she entered into the tenancy. The landlord acknowledged that Ministry staff contacted him and that he would not divulge the identity of the property owner to Ministry staff; however, the landlord claims he informed Ministry staff that he had the authority to rent out the rooms on the ground floor.

The landlord claims the tenant did not notify him of a missing closet shelf or request a closet shelf. Further, the kitchen is shared between the tenants occupying the ground floor and it is the tenants' responsibility to clean the kitchen and bathroom. The tenant had inspected the rental unit before entering the tenancy and touched everything without complaining of the condition of the kitchen.

Tenant's request for the landlord to comply

The tenant made the following requests for compliance by the landlord. The landlord should:

a. Provide emergency contact information for the landlord as required by the Act.
b. Unplug and clean the toilet as it is plugged and unusable to the point where the tenant must use a bucket.
c. Not shut off the power to the ground level or if the power is shut off to immediately restore it.
d. Provide working smoke detectors.
e. Clean and degrease the kitchen.

f. Rent the other bedrooms to females only as originally indicated by the landlord.

The tenant explained that on September 1, 2010 a male tenant was evicted from the ground floor and that there was a screaming match between the male tenant and the woman assisting the landlord. That day the power was shut off to parts of the ground floor, garbage was thrown around the ground floor by the woman assisting the landlord, the kitchen was left greasy and the toilet plugged. The police were called and the police had to spend a great amount of time persuading the woman assisting the landlord to restore the power to the rental unit.

The landlord claimed that there was no screaming match between the male tenant and the woman assisting the landlord. The landlord denied the male tenant was evicted but also stated the male tenant had not paid rent and spent much of his time drinking. The landlord claimed that the male tenant left peaceably. The landlord also denied shutting off power to the rental unit but claimed the male tenant may have done it. When asked why the police visited the landlord on that day the landlord was extremely hesitant to respond to my enquiry and vaguely indicated that the police indicated it would good that there was going to be dispute resolution proceeding.

The landlord did not accept that the male tenant caused the kitchen to be greasy as the landlord claimed that the male tenant had no food to cook. The landlord submitted that it is the tenant that leaves the kitchen messy. The tenant refuted by stating the male tenant had cooked hamburger frequently especially after coming home from drinking. The tenant also pointed to the landlord's photograph depicting a knife in a messy kitchen that does not belong to the tenant.

Provided as evidence by the landlord are copies of a tenancy agreement, the Notices to End Tenancy, a copy of the August 6, 2010 Money Order, and photographs of the kitchen area of the ground floor.

Provided as evidence by the tenant is a copy of a tenancy agreement and audio recordings of conversations between the tenant and the woman assisting the landlord and the landlord.

Analysis

Much of the evidence provided to me by the parties was disputed verbal testimony. Upon hearing from the parties, I found the landlord's credibility to be significantly lacking in comparison to the tenant's credibility. I base my findings of credibility on the following factors.

The landlord testified twice that he personally served the 10 Day Notice upon the tenant on August 2, 2010 yet his Application for Dispute Resolution indicates it was posted. In an attempt to explain this discrepancy the landlord submitted that the staff at the Residential Tenancy Branch advised him to provide in untruthful statement on his Application for Dispute Resolution. I find this submission unfathomable and absurd. In contrast, the tenant stated the 10 Day Notice was posted on her door which is consistent with landlord's Application for Dispute Resolution.

The tenant provided a clear and consistent account of what transpired that day. In contrast, the landlord claimed the male tenant left peaceably and was not evicted but stated the male tenant did not pay rent and often drank. On that same day there the police are called to the rental property, garbage strewn around the property, the toilet is plugged and the power is cut off to parts of the ground floor. I find these events inconsistent with a tenant leaving peaceably as stated by the landlord and to be more consistent with a tenant who may have been evicted as stated by the tenant. I found the landlord was also evasive and hesitant to explain why the police contacted him that day. I interpret the landlord's hesitance to explain what the police said to him as indication the tenant's version of events was accurate.

Finally, the landlord provided a different version of a tenancy agreement to the Residential Tenancy Branch as what was provided to the tenant. On page 2 of the landlord's version of the tenancy agreement there are initials in the space provided for the tenant to initial that the tenancy is for a fixed term. Upon review of the tenant's version of the tenancy agreement that space has been left completely devoid of any initials. Had the tenant altered the agreement by removing her initials the pre-printed typing would have been removed as well. Therefore, I accept the tenant's version of the tenancy agreement over that provided by the landlord.

In light of the above factors, I place found the landlord to have very little credibility in these proceedings and I have applied more weight to the submissions of the tenant.

Term of tenancy agreement

As I stated previously, I have found that the term (duration) of the tenancy agreement is on a month-to month basis. I preferred the tenant's submissions over that of the landlord and in the absence of clear evidence that the duration is for a fixed term, by default, the term is a month-to-month. Accordingly, I find and Order that this tenancy is on a month-to-month basis.

10 Day Notice to End Tenancy

I accept that the tenant received the 10 Day Notice that was posted on her door on August 2, 2010. When a 10 Day Notice is posted on a door it is deemed to be received three days later. Accordingly, the tenant had until August 10, 2010 to pay the rent in order to nullify the Notice.

I accept that the tenant provided the landlord with a Money Order for the rent owed on August 6, 2010. It was in dispute that the landlord returned the Money Order to the tenant on August 6, 2010. I am inclined to believe that it was not returned to the tenant as the landlord's credibility is seriously lacking and because the landlord did not provide an explanation as to why he did not request monetary compensation for the unpaid rent

in making the landlord's application if in fact the Money Order was returned to the tenant.

I find the landlord did not satisfy me that the tenant failed to pay rent by August 10, 2010. I find the landlord did not satisfy me that the Money Order was returned to the tenant August 6, 2010. Therefore, **I cancel the 10 Day Notice to End Tenancy issued August 2, 2010.** Accordingly, the landlord's request for an Order of Possession for unpaid rent is dismissed.

If in fact the Money Order remains in the landlord's possession and it is un-cashable by the landlord, the landlord may return it to the tenant so that she can have it replaced**. If the Money Order is returned to the tenant I ORDER the tenant to immediately have the Money Order replaced with a Money Order bearing the correct spelling of the landlord's name, as it appears on the tenancy agreement.**

Tenant's monetary claims

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

There is no requirement in the Act for a landlord to complete a Shelter Information document or divulge information to Ministry staff with respect to the property ownership.

Accordingly, I do not find the landlord violated the Act in this regard and the tenant is not entitled to a refund of the rent she paid for June and July 2010. In this case, the landlord did provide the tenant with a copy of a tenancy agreement as required by the Act. As information for the tenant, a landlord is not necessarily the owner of the property and includes any of the following persons:

> **"landlord"**, in relation to a rental unit, includes any of the following:
>
> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;

I have no evidence that the landlord in this case does not meet the definition of the landlord. Rather, the landlord signed a tenancy agreement with respect to the rental unit and has received rent and a security deposit in relation to the rental unit and has issued Notices to End Tenancy. Therefore, with respect to eligibility for the shelter portion of income assistance, the tenant's remedy would be with her Ministry caseworker and not the landlord.

As the tenancy remains in effect it is premature for the tenant to request return of the security deposit or key deposit and I deny this request.

I find insufficient evidence the tenant requested a closet shelf from the landlord or one was to be provided to her by the landlord. In addition, I was not provided a receipt for such an expenditure. Therefore, I deny the tenant's request for compensation for purchasing a closet shelf.

The tenant failed to provide sufficient evidence that she had to eat in restaurants and spent $300.00 to do so. Therefore, I find the tenant failed to substantiate the monetary value of this claim and it is dismissed.

I find no basis in the Act to require the landlord to pay the tenant for costs to move in the unit. The tenant has not incurred moving costs to vacate the rental unit and that claim is premature at best. Therefore, I do no award the tenant moving costs.

Under the Act, a tenant is entitled to quiet enjoyment of the residential property. Section 28 of the Act provides that a tenant is entitled to:

> (a) reasonable privacy;
>
> (b) freedom from unreasonable disturbance;
>
> (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;
>
> (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I accept the tenant's submissions that the woman assisting the landlord threw garbage around the ground floor living area outside of the tenant's bedroom. I find this behaviour completely unacceptable. Between this behaviour and hearing about the landlord's refusal to restore the electricity in a timely manner or repair the toilet in a timely manner, I find the landlord has demonstrated a complete lack of respect for the

tenant's right to quiet enjoyment. **I award the tenant compensation for loss of quiet enjoyment in the amount of $225.00 or one-half of a month's rent.**

I provide the tenant with a Monetary Order in the amount of $225.00 to serve upon the landlord. The tenant is authorized to deduct $225.00 off a subsequent month's rent in satisfaction of this award.

Orders for Compliance

With respect to the tenant's request for compliance by the landlord I make the following findings and Orders.

a. Section 33 of the Act requires that "the landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs."

   I order that the landlord comply with section 33(2) immediately upon receiving this decision.

a. Section 27 of the Act prohibits a landlord from terminating an essential service or facility. I find that electricity is an essential service. I accept that the landlord, or the landlord's assistant caused the electricity to be cut off or knew it was cut off and did not restore it. Therefore, I ORDER the landlord to ensure the electricity is not terminated in the future and that if the electricity is terminated by another person that it be immediately restored upon report of the termination by a tenant.

b. Section 32 of the Act requires that a landlord provide a residential property suitable for occupation. Upon hearing from the parties, I am satisfied that the toilet has become clogged and unusable. During the hearing, I ORDERED the landlord to obtain a plumber and have the toilet unplugged and cleaned so that it

is useable no later than September 4, 2010. Should the landlord not complete this repair by September 4, 2010 the tenant was authorized to have this repair made and deduct the cost from rent payable to the landlord in exchange for a receipt or invoice showing the amount paid by the tenant.

c. Section 32 of the Act requires that a rental unit comply with health and safety laws. The landlord is ORDERED to install at least one working smoke detector for the ground floor immediately upon receiving this decision.

d. Section 32 of the Act requires that the landlord provide residential property suitable for occupation. Upon hearing from the parties, I am satisfied that former tenants left the kitchen dirty and greasy. It is not the tenant's responsibility to clean up after the landlord's other tenants. Therefore, I ORDER the landlord to clean and degrease the kitchen immediately upon receiving this decision.

e. Upon review of the tenancy agreement provided by the tenant, I find insufficient evidence that the landlord is prohibited from renting the other bedrooms to male persons. Therefore, I do not make such an order upon the landlord.

In addition to the above requests of the tenant, I find it necessary to further ORDER the landlord to comply with section 28 of the Act by respecting the tenant's right to quiet enjoyment of the rental unit and residential property.

With this decision I do not authorize a rent reduction other than the one-time deduction of $225.00 as awarded above for loss of quiet enjoyment.

Conclusion

The 10 Day Notice to End Tenancy has been cancelled and the landlord's request for an Order of Possession has been dismissed.

If the landlord returns the Money Order of August 6, 2010 to the tenant the tenant must immediately replace the Money Order with a Money Order bearing the correct spelling of the landlord's name, as indicated on the tenancy agreement.

The tenant has been awarded $225.00 for loss of quiet enjoyment and the remainder of the tenant's monetary claims have been dismissed. The tenant is provided a Monetary Order to serve upon the landlord and may deduct $225.00 from a subsequent month's rent in satisfaction of his award.

The landlord has been ORDERED to:

a. Comply with section 33 of the Act by posting or providing emergency contact information to the tenant in writing;
b. Ensure electricity to the ground floor is not terminated and is restored immediately if it comes to be terminated;
c. Repair and clean the toilet on the ground floor no later September 4, 2010;
d. Install at least one working smoke detector in the ground floor;
e. Clean and degrease the kitchen on the ground floor; and,
f. Comply with section 28 by protecting the tenant's right to quiet enjoyment of the rental unit and residential property.

If the landlord fails to repair and clean the toilet by September 4, 2010 the tenant has been authorized to deduct the amount paid to have the toilet repaired from rent owed to the landlord and provide the landlord with a copy of the invoice or receipt.

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 15, 2010.

Dispute Resolution Officer