Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPB, OPC, OLC, PSF, MNDC, MNSD, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order to have the landlord provide services or facilities required by law; and for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

At the outset of the hearing, I confirmed the tenant had vacated the rental unit on October 28, 2010. As a result, the tenant no longer requires an order to have the landlord comply with the *Act* or an order to have the landlord provide services or facilities. As such, I amend the tenant's application to exclude these matters.

In addition, as the tenant no longer has possession of the rental unit the landlord no longer requires an order of possession; I therefore amend the landlord's application to exclude the matters related to possession.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for damage or loss under the *Act*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act.*

In addition it must be decided if the tenant is entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act.*

Background and Evidence

The landlord submitted a copy of a tenancy agreement that shows the tenancy began on September 1, 2010 as a month to month tenancy for the monthly rent of $1,200.00

due on the 1st of each month and that a security deposit of $600.00 was paid on September 1, 2010. The agreement goes on to say that the tenant will take possession of the rental unit on September 20, 2010 and the tenant has paid $600.00 for September rent.

The tenant testified that once she moved in the landlord started harassing her by calling and "texting" her all the time; by wanting to change the tenancy agreement after the original agreement had been signed by both parties and the tenant had already moved in.

The parties confirmed that at one point the tenant contacted the police who spoke to the landlord after which the tenant indicated the officer suggested she get a post office box for the landlord to communicate with her and that the officer instructed the landlord to not interact with the tenant.

The tenant submits that the landlord wanted to change the tenancy agreement to stipulate that the tenant could only use the oil furnace during the day and could use the pellet stove at night for heat. The landlord contends that this had been part of an original verbal agreement the parties had entered into at the start of the tenancy.

The tenant stated that a breaker blew in her unit and she went without power for 1 ½ days in part of her rental unit. The landlord contends that the landlord did not want to turn the power back on until she was able to contact the tenant to find out if there was anything plugged in or turned on that would put the residential property at risk should the power be turned on.

The landlord goes on to note that the tenant refused to respond to the landlord's contact attempts and that she turned the power back on immediately upon confirmation from an Information Officer at the Residential Tenancy Branch conducting an intervention on behalf of the tenant that there was nothing that would pose a risk to the property should the power be turned on.

From the start of the tenancy the landlord indicates there were some issues that she felt were matters that needed to be dealt with. At first she put it down to the tenant settling and then when they seemed to continue she asked to meet with the tenant and they arranged a meeting for October 19, 2010.

Some of the issues identified by the landlord (both prior to and after the meeting) include:

- September 24, 2010 – late night guests;
- October 1, 2010 – late night guests;
- October 12, 2010 – tenant "texts" landlord saying she has a second dog, contrary to tenancy agreement;
- October 15, 2010 – loud all evening event;

- October 21, 2010 – landlord “texts” tenant asking for response on addendum (see below);
- October 21, 2010 – visitors all night;
- October 23, 2010 – washing machine going at 7:00 a.m.; loud TV at 11:30 p.m.;
- October 24, 2010 – furnace running through the night;
- October 25, 2010 – tenant “texts” landlord advising of blown electric circuit;

Based on this meeting, where the landlord believed they had come to some understanding on some issues, she wrote up an addendum to the tenancy agreement. In the meeting the landlord alleges the tenant indicated that if the landlord did not give the tenant approval for a second dog the tenant would find another place to live.

The landlord asserts that when the tenant informed her on October 25, 2010 that she would not sign the addendum the landlord took that to mean that the tenant would be ending the tenancy and requested she provide the landlord with a move out date.

On October 26, 2010 the landlord’s agent submits that she tried to serve the tenant with a notice to enter the rental unit and although the tenant’s daughter answered the door the tenant never came to the door herself. The agent indicates that she tried three more times to provide the tenant with the notice and a Mutual Agreement to End Tenancy.

The landlord and her agent contacted the local police, hoping to contact the officer that they had spoken to before and were informed that she was not available but that an officer had been dispatched to attend at the request of the tenant.

In the presence of the officer the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause as well as the notice of entry, but the tenant refused the documents and the agent posted the 1 Month Notice to End Tenancy for Cause to the door of the rental unit.

The tenant submits that when she had the power off in her unit she started in inquire with local authorities to see how she could get her own breaker box in the rental unit. From that she was informed that the rental unit had never been issued any permits or inspections completed with the local municipality.

The tenant suggests that the local authorities indicated that it would be dangerous for her to be living in the unit without these inspections and as such the tenant decided she needed to move out immediately to protect her and her daughter, from imminent harm.

On October 28, 2010 the landlord contacted her agent to advise the tenant was in the process of moving out. The agent attended to try to have the tenant agree to return the keys to the rental unit and for a time to complete the move out inspection. The tenant did not agree to meet or return the keys on October 31, 2010 but did agree to meet on November 1, 2010 at 1:00 p.m.

The tenant submits that she returned to the rental unit on November 1, 2010 in the morning to clean the unit prior to the inspection and was unable to enter because the landlord had posted a notice stating that if the tenant entered the property the landlord would call the police to pursue trespassing charges. The tenant left and did not clean the rental unit.

The tenant attended the move out inspection with the landlord's agent. The agent completed the Condition Inspection Report and had the tenant sign the report indicating the tenant agrees with the condition outlined in the report and that she agrees to the landlord deducting $600.00 from the security deposit. There is a notation however that the landlord will notify as to the exact costs.

The tenant testified that when she signed the Condition Inspection Report neither box indicating whether she agreed or disagreed was checked and that the landlord checked the box after she left. The tenant continued that she just wanted to sign things and get out of there.

The tenant now contests some of the items noted in the move out inspection including: carpet cleaning; flea treatment; missing handles; chipped paint; missing decorative letters (the tenant indicates she has these and can return them).

The tenant also claims the following financial compensation based on her experience in the tenancy:

Description	Amount
Moving costs (to move in – Sept 20, 2010)	$665.28
Return of security deposit	$600.00
Return of September 20- 30, 2010 rent	$600.00
Return of October 2010 rent	$1,200.00
Rental of a Post Office box	$71.68
Registered letter (for this hearing)	$11.14
Rental for truck to move out	$179.19
Total	$3327.29

Analysis

Section 44 of the *Act* stipulates that a tenancy may end by, among other ways, the landlord providing notice in accordance with specific sections (46, 47, 48, 49, or 49.1) of the *Act* or by the tenant giving notice in accordance with Section 45 of the *Act* or by mutual agreement in writing.

If the tenant chooses to end the tenancy Section 45 requires the tenant to provide the landlord with a notice with an effective date that is not earlier than one month after the

date the landlord receives the notice and is the day before the day in the month that the rent is due.

Despite the tenant's claim that the rental unit was unsafe for occupancy, I find that her testimony in this regard is not reliable, as the municipality would not be in a position to determine if there was any danger or unsafe installations in the absence of any inspections.

Therefore, I find the tenant failed to give the landlord notice in compliance with Section 45.

While the landlord did on October 26, 2010 issue a 1 Month Notice to End Tenancy for Cause, in accordance with Section 47 of the Act, the effective date of the notice was November 30, 2010. In light of this fact in conjunction with the tenant's non compliance with Section 45, I find the tenant is responsible to pay the rent for the month of November 2010 to the landlord.

In relation to both the landlord's and the tenant's claim to the security deposit despite the tenant's claim that the "box" was not checked when she signed the document, she was signing a legal document that chronicled the condition of the rental unit. It was incumbent upon the tenant to ensure she knew what she was signing and that it was complete.

In addition, the tenant also signed the Condition Inspection Report in a second location agreeing to have the landlord deduct up to the full security deposit for cleaning and repairs resulting from the condition that the rental unit was in. As such, I find the tenant has forfeited her right to claim the security deposit and the landlord remains entitled to retain any amount up to $600.00.

Having made this determination, I find the landlord prevented the tenant from being able to return and clean the rental unit by posting the notice of October 31, 2010 that states the tenant could not return to the property or the landlord would pursue trespassing charges.

In addition, the landlord, in her notice of October 31, 2010 states that "all tenancy rights to access the suite are null and void". As the landlord's 1 Month Notice to End Tenancy for Cause was not yet effective and the tenant had neither given the landlord a notice to end the tenancy nor returned the keys to the landlord, I find the tenant had not relinquished possession of the rental unit and the landlord had no right restrict the tenant's access on November 1, 2010.

As a result, I find the tenant is entitled to compensation for the charges the landlord has made for deep cleaning $150.00; garbage/recycle removal $100.00; and carpet professionally cleaned $150.00 for a total of $400.00.

While I accept that the parties appear to be confrontational in their relationship, I also accept the landlord's assertion that she was trying to work out the "house rules" of the tenancy. I also note that from the evidence and testimony I find the tenant was uncooperative and uncommunicative throughout the tenancy. I find the tenant has failed to provide sufficient evidence to justify the return of rent for September and October 2010.

As to the tenant's claim for moving expenses, these are choices the tenant made, both in entering into a tenancy and ending a tenancy, on how to facilitate her moving and I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenant.

It was the tenant who decided she could not communicate with the landlord in person, by phone or by "texting" and it was her decision to rent a mail box to facilitate that communication. Again, I find the tenant has failed to provide sufficient evidence to hold the landlord responsible for this choice made by the tenant.

Finally, to the tenant's claim for the registered letter for the provision of notice of this hearing to the landlord, the *Act* does provide for the reimbursement of expenses related to disputes arising from tenancies other than the filing fee.

Conclusion

For the reasons noted above, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$1,385.00** comprised of $1,200.00 rent owed; $585.00 to costs agreed to by the tenant from the move out inspection; less $400.00 compensation granted to the tenant resulting from the landlord's restriction of November 1, 2010.

I order the landlord may deduct the security deposit and interest held in the amount of $600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$785.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As both parties were partially successful in their claims, I dismiss both applications to recover the filing fee from the respective respondents.

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 23, 2010.

Dispute Resolution Officer