



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNE, CNR, MNDC

Introduction

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the evidence and testimony provided.

The tenant has disputed a 1 Month Notice to End Tenancy for End of Employment issued on January 31, 2010 and a 10 Day Notice to end Tenancy for Unpaid Rent, or Utilities issued on February 4, 2011.

Preliminary Matter

The tenant's advocate provided her testimony at the start of the hearing; in order to ensure a fair process, without prejudice to the respondent.

Issue(s) to be Decided

Should the Notice Ending Tenancy for End of Employment, issued on January 31, 2011, and the 10 Day Notice to End Tenancy for Unpaid Rent or utilities, issued on February 4, 2011, be cancelled?

Is the tenant entitled to compensation for loss of laundry services in the sum of 51.00?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Ending tenancy was served on the tenant indicating that the tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The tenancy commenced in November, 2010; the tenant took possession of the cabin in early November, rent owed for November was waived by the landlord. The tenant understood that rent was \$700.00 per month, due on the first day of each month. The tenant agreed to collect eggs and to clean the chicken coops 6 days per week, for a rent reduction in the sum of \$350.00. There was no written employment agreement or written tenancy agreement signed by the parties.

Rent in the sum of \$350.00 was paid by a government agency; cheques were mailed directly to the landlord each month.

Each month the landlord issued the tenant a pay cheque in the sum of \$350.00; which was then immediately returned to the landlord.

Laundry services were provided by allowing the tenant to enter the landlord's home; this service was terminated without notice at the end of December. Since January 1, 2011, the tenant has not been able to do her laundry on the property and has suffered a loss equivalent to \$315.00, as a loss of value of the tenancy for the hardship imposed by the lack of laundry facilities.

The tenant confirmed that she received the Notice ending tenancy issued on January 31, 2010, that she was released from her duties and given a holiday-pay cheque. The tenant stated that she understood if her duties were withdrawn she would then be responsible for the total rent in the sum of \$700.00 per month. The tenant stated that she was not under the impression she would have to move, should the landlord no longer require her services.

The tenant requested an additional 15 days to move out; the landlord declined to mutually settle the matter of the end of tenancy.

The landlord submitted that the tenant knew she must move out, should her services not be required. The landlord wishes to take possession of the rental unit as this is where they have people live who assist them on their acreage.

The landlord stated that the use of laundry services was a privilege only and that the dryer had to be replaced as a result of heavy loads dried by the tenant. The tenant had opportunities to go off the property to do laundry, as she often had friends visiting who had vehicles.

The landlord provided a handwritten list of utilities owed and paid during the tenancy and copies of notes asking for utility and rent payments. The landlord stated that the

property has a number of utility meters and that readings were taken from a meter, which was used to calculate the tenant's usage. The landlord provided a list of meter readings and resulting costs.

The tenant stated that she had requested copies of the utility bills and had not been provided them. The landlord testified the bills would have been meaningless, as they covered a number of buildings on the property. The landlord submitted the tenant was well aware of the meter readings being taken so her usage could be calculated.

The Notice ending tenancy was issued on February 4, 2011, and the tenant disputed that Notice within 5 days.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the Notice to End Tenancy for end of employment issued on January 31, 2011, is of no force or effect.

Further, there is evidence before me of some sort of agreement that the tenant pay utility costs. The tenant has requested copies of utility bills; the landlord has not provided those, but takes readings from a meter and calculates the amount owed. In the absence of a clearly expressed term of the tenancy and, as a result of the conflicting testimony of the parties, I find that the term of the verbal agreement in relation to payment of utilities is unenforceable.

Therefore, I find that the Notice ending tenancy for unpaid utilities, issued on February 4, 2011, is of no force or effect.

I have based this decision on the lack of a written agreement which clearly sets out the terms of the employment and tenancy terms. Section 6(3) of the Act provides:

- (3) A term of a tenancy agreement is not enforceable if*
- (a) the term is inconsistent with this Act or the regulations,*
 - (b) the term is unconscionable, or*
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.*

(Emphasis added)

Section 27 of the Act provides:

Terminating or restricting services or facilities

- 27** *(1) A landlord must not terminate or restrict a service or facility if*

*(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
(b) providing the service or facility is a material term of the tenancy agreement.*

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In the absence of 30 days written notice and a reduction in rent in an amount equivalent to the reduction in value of the tenancy, I find that the loss of laundry services devalued the tenancy equivalent to a nominal amount of \$30.00 per month, effective January 1, 2011. Therefore, pursuant to section 62(3) of the Act, I find that the tenant's rent effective January 1, 2011, is \$670.00 per month. I have rejected the landlord's submission that use of laundry facilities was a privilege and find that it was a service provided to the tenant, as part of the verbal tenancy agreement.

Any amount the tenant has paid in rent, in excess of \$670.00 per month, from January 1, 2011, onward, may be deducted from the next month's rent owed as compensation for the loss under the Act.

Conclusion

The Notice ending tenancy for end of employment and the Notice ending tenancy for unpaid utilities are both of no force or effect. This tenancy shall continue until it is ended as provided by the Act.

The value of the tenancy was decreased, effective January 1, 2011; with rent reduced to \$670.00 per month, due on the first day of each month. Any rent overpaid by the tenant may be deducted from the next month's rent owed, as compensation for damage or loss under the Act.

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: February 28, 2011.

Residential Tenancy Branch