



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC OLC RR

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to have the Landlord comply with the Act and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, served personally to the Landlord on January 21, 2011. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

At the outset of the hearing I explained how the hearing would be conducted and informed all participants of proper conduct during the hearing. I asked each participant individually if they had any questions about how the hearing would be conducted. No one asked questions about the process and the Tenant stated that he understood what I had explained.

Issue(s) to be Decided

1. Has the 1 Month Notice to End Tenancy (the Notice) been completed and served in accordance with the Act?
2. If so, has the Landlord met the burden of proof for issuing the Notice?
3. If not, has the Tenant met the burden of proof to have the Notice cancelled?
4. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
5. If so, has the Tenant met the burden of proof to have reduced rent for services agreed upon but not provided.

Background and Evidence

At the outset the Tenant stated he handed the *Residential Tenancy Branch* evidence sometime last week and was told it was marked late. He did not serve this evidence to the Landlord as he was told not to by a lawyer.

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective June 1, 2010. Rent is payable on the first of each month and was initially \$685.00 per month and was later reduced to \$660.00 per month after the Landlord cancelled the cable connection. On May 21, 2010 the Tenant paid \$337.50 as a security deposit.

The Landlord testified that shortly after the onset of the tenancy the building manager began to give the Tenant verbal warning about the noise coming from the Tenant's unit. When the noise continued the Tenant was issued a "breach letter" on July 23, 2010 that was posted to the Tenant's door which states "Please consider this to be your written notification, to curtail loud & excessive noise. Failure to do so will result in a one month Notice of Termination". The building manager continued to receive complaints from other tenants.

The Tenant interrupted the Landlord's testimony when he provided a derogatory comment. I cautioned the Tenant that this was his warning to conduct himself in accordance with the rules of procedure I had explained at the beginning of the hearing. If he continued this behaviour I would disconnect him from the hearing and the hearing would continue in his absence. He apologized and stated that he was not speaking to me or the Landlord.

Then on November 27, 2010 there were complaints of another disturbance coming from the Tenant's suite. So on December 3, 2010 a second breach letter was personally served to the Tenant from the male building manager. The Landlord acknowledged that the date indicated at the bottom of the form was a clerical error as the building manager had written January 3, 2010 instead of December 3, 2010. The Landlord stated it was definitely December 3, 2010 as she had recorded this date in her records as being the second and final breach letter. This second letter states "Please consider this to be your 2nd written notification. Your next notice will be a one month Notice of Termination being served on yourself."

Then on January 19, 2011 the Landlord received a call that there was a disturbance happening in the hallway outside the Tenant's suite which involved the Tenant in a domestic dispute. The Landlord and building manager received telephone calls from

another tenant requesting police presence to which the Landlord instructed this other tenant to hang up and call the police. There was concern for other tenant's safety as the Tenant had an axe that he was swinging around. The complaining tenant stated that he was concerned there would be bloodshed between him and the Tenant if he reported this to the police. The managers received complaints from tenants when they entered the building shortly after this event so a 1 Month Notice was issued to the Tenant. The male building manager testified he personally served the 1 Month Notice to End Tenancy for Cause to the Tenant on January 21, 2011, at the rental unit.

The Landlord referred to pages 11 through 18 of her evidence which consists of copies of complaint letters they received from other tenants in the building. She stated that on February 11, 2011 she received a call from the Tenant during which she explained that the 1 Month Notice was issued to him after he was issued the two written notices and the noise complaints continued. When the Landlord returned to work Monday February 14, 2011 she had a message left the day before from a distraught tenant who was concerned for her safety. This tenant called the Landlord first thing Monday February 14, 2011 and she advised the Landlord that the Tenant had gone door to door speaking to every tenant who wrote a complaint letter. He demanded the tenant go to a notary public to have her letter changed to say she was withdrawing her complaint. The Landlord stated this tenant was clearly upset and concerned that the Tenant may harm her. The Landlord had a maintenance person go to this tenant's unit and check that her lock was secure.

The Landlord stated the Tenant called her later that day, February 14, 2011, and told her that he had spoken to everyone in the building and everything is okay now.

The Tenant interrupt the Landlord's testimony a second time when I told the Tenant this was his final warning. I explained that there would be no further warnings and if he interrupted again the hearing would continue in his absence. He began to argue with me that he was speaking to his wife, at which point I told him to stop so we could continue with the hearing.

The Landlord said that the building manager was advised that on February 17, 2011, the Tenant had followed another tenant into his bank and caused a disruption telling this tenant to get his letter changed and notarized. Ever since the Tenant received copies of the Landlord's evidence he has been going around wanting to know who wrote the letters against him and once he finds out he tells them to get the letters changed. The other tenants are now afraid of this Tenant.

The Tenant testified and stated that these other tenants came to his apartment to apologize to him for issuing those letters as they feel they are not true. One tenant stated he made an error on the unit number and in fact his complaint was about a different tenant in another unit. He said he does not appreciate being made out to be a monster. He then pointed to the Landlord's evidence on page 10 and he notes this letter does not say that he spilled blood. He then noted that the letter on page 11 of the Landlord does not specifically refer to him so this complaint could be against anybody. He discussed the complaint on page 12 of the Landlord's evidence with the tenant who wrote it. He stated he went to her to discuss this letter. I clarified that the Tenant went to this other tenant's apartment to discuss her complaint the letter.

The Tenant stated the Landlord is discriminating against him. When I asked why, he stated he was in a wheel chair and that the breach letters were issued because someone was yelling up at his balcony at a time when he was not at home. He confirmed receiving both breach letters and stated that he was upset because he was not issued any verbal warnings. He stated the building managers never came and spoke to him about verbal warnings in June 2010 and he feels he should have at least been given verbal warnings before getting issued breach letters. He argued that the female building manager told the other tenants not to worry about providing new letters to change their complaints.

The other two items being claimed pertain to the loss of cablevision. The Tenant stated that his tenancy agreement provided for cablevision and then he received a notice that the Landlord was cancelling the cablevision and reducing their rent by only \$25.00 per month. He stated that this change was effective January 1, 2011 and that it costs \$65.00 to get basic cable so he wants reduced rent. He stated there was a ruling made for another tenant about this issue so he did not provide evidence in support of this claim. He decided not to go with the same service provider that the Landlord had.

The Landlord confirmed that a notice of reduce services was provided to the Tenant on November 28, 2010 to reduce the rent for loss of cable effective December, 31, 2010. The cable service provider had offered the tenants six months at \$19.95 and the Landlord was advised that they would not be responsible to reimburse the Tenants if the price goes up afterwards.

At 10:19 a.m. the Tenant interrupted the testimony again. I told the Tenant he would have to disconnect from the hearing now as I would not tolerate any more interruptions. The Tenant began to argue stating he was complaining because he was in pain. I told the Tenant if he did not disconnect from the hearing himself that I would disconnect him. He replied "so now you are discriminating against me" and he hung up.

The Landlord concluded her testimony stating that they issued the 1 Month Notice to End Tenancy to have the Tenant move out. She stated she feels he will not move out based on the Notice and requested that I issue the Landlord an Order of Possession.

Analysis

At 10:19 a.m. I ordered the Tenant to disconnect from the hearing in accordance with #8.7 of the *Residential Tenancy Rules of Procedure*. Rule # 8.7 states that disrupting the other party's presentation or testimony will not be permitted. The Dispute Resolution Officer may give directions to a party who provides inappropriate behaviour. A person who does not comply with the Dispute Resolution Officer's direction may be excluded from the dispute resolution proceeding and the Dispute Resolution Officer may proceed with the dispute resolution proceeding in the absence of the excluded party.

The Tenant confirmed that he did not provide the Landlord with copies of his evidence which is a contravention of section 3.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the respondent Landlord has not received copies of the Tenant's evidence I find that the Tenant's evidence cannot be considered in my decision. I did however consider the Tenant's testimony.

Upon review of the 1 Month Notice to End Tenancy for cause issued January 21, 2011, I find the Notice to be completed in accordance with the requirements of the Act as the effective date lists February 28, 2010. That being said, section 53 (1) of the Act provides that if a landlord gives a notice to end tenancy effective on a date that does not comply with the Act, the notice is deemed to be changed in accordance with the Act. Therefore the effective date of the 1 Month Notice to End Tenancy has automatically been changed to be effective February 28, 2011.

After careful review of the testimony, I find that the 1 Month Notice was served upon the Tenant in a manner that complies with the Act.

The evidence supports the Tenant was issued two breach letters, July 23, 2010 and December 3, 2010. The second breach letter clearly states "Please consider this to be your 2nd written notification. Your next notice will be a one month Notice of Termination being served on yourself". Another disturbance involving the Tenant occurred January 19, 2011, after which a 1 Month Notice to End Tenancy was issued to the Tenant January 21, 2011.

Section 47 (1) (d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or (iii) put the landlord's property at significant risk. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore I dismiss the Tenant's request to cancel the 1 Month Notice to End Tenancy issued for cause, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing. Based on the aforementioned I hereby approve the Landlord's request for an Order of Possession.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant is seeking reduced rent as compensation for the cost of his monthly cablevision which used to be provided in his rent. While the evidence supports the Landlord reduced the service of cablevision and reduced his rent by \$25.00 per month the Tenant did not provide evidence to support what the cost of his cablevision is now. Therefore I find the Tenant has not provided sufficient evidence to meet the burden of proof of the actual amount required to compensate for his loss. Therefore I dismiss his

claim to have the Landlord comply with the Act and reduce his rent, without leave to reapply.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The Landlord's decision will be accompanied by an Order of Possession effective February 28, 2011. This Order must be served on the Tenant and may be filed in Supreme 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: February 21, 2011.

Residential Tenancy Branch