



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, OLC, RPP, LRE, OPT, AAT, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to cancel a Notice to End Tenancy - Section 46;
2. A Monetary Order for money owed or compensation for damage or loss – Section 67
3. A Order for the Landlord to comply with the Act, regulation or tenancy agreement – Section 62
4. An Order requiring the Landlord to return the tenant’s personal property – Section 65/67
5. An Order suspending or setting conditions on the landlord’s right to enter the rental unit – Section 70
6. An Order for Possession of the rental unit – Section 54
7. An Order allowing access to the unit for the Tenant – Section 70
8. A Order to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65
9. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not participate in the conference call hearing and was represented by legal counsel.

Counsel requested an adjournment in order to meet with the Landlord and prepare for the Hearing. Upon listening to the objections of the Tenant, accepting the Tenant's current homeless state and noting the time available between the service of the application and the hearing date, the request for an adjournment was denied. The Tenant was given full opportunity to be heard, to present evidence and to make submissions. Counsel for the Landlord was given full opportunity to be heard, to present evidence and make submissions.

Issue(s) to be Decided

Is the Notice to end Tenancy is valid?

Is the Tenant entitled to an Order of Possession?

Is the Tenant entitled to access to the unit?

Is the Tenant entitled to return of the Tenant's personal property?

Is the Tenant entitled to a suspension or conditions on the landlord's right to enter the rental unit?

Is the Tenant entitled to a reduction in rent for facilities agreed upon but not provided?

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord required to comply with the Act?

Background and Evidence

The tenancy began on February 1, 2011. The tenancy is an oral agreement between the Landlord and two co-Tenants. Rent in the amount of \$1,200.00 is payable in advance on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 from each Tenant for the February rent for a total rent of \$1,200.00 and a security deposit from each Tenant in the amount of \$300.00 for a total security deposit of \$600.00. On February 28, 2011, the Landlord left a dateless, handwritten note inside the Tenants' suite purporting to evict the Tenants immediately for non-payment of February's rent.

On March 1, 2011, Tenant A arrived at the unit to find his personal belongings, including clothing and furniture is a truck outside the unit. The Tenants' entry into the unit was also barred so that food stored in the unit could not be accessed. Tenant A became homeless, stayed at a Hotel for a few days and since then has been sleeping on various friends' couches. Tenant B went home to his parents' residence out of province.

Tenant A states that February's rent was paid and that he believes the real reason for the eviction was that the Landlord believed marihuana was being smoked in the unit. Tenant A states that he is uncertain about whether to return to the unit but wants his belongings returned. Tenant A provided an address for delivery of mail or other documents.

Counsel for the Landlord confirmed that Tenant As' personal belongings were being kept by the Landlord in a safe and secure place.

Tenant A claims the following out of pocket costs as a result of the Landlord's actions, for which receipts were provided:

| | |
|-------------|--------------|
| • Hotel: | \$514.90; |
| • Clothing: | 116.31 |
| • Food: | <u>91.00</u> |
| Total | \$772.21 |

Tenant A also claims replacement costs for furniture, clothing and household goods as follows:

| | |
|------------------------|-----------------|
| • TV: | \$2,000.00 |
| • Couch and love seat: | 1,500.00 |
| • Bed: | 1,000.00 |
| • Game and movies: | 1,000.00 |
| • Clothing: | 2,000.00 |
| • Household goods: | <u>1,000.00</u> |
| Total | \$8,500.00 |

The Tenants claims reimbursement of rent paid for February and a return of the damage deposit in the amount of \$1,800.00.

The quantum of the Tenants claim is \$11,072.21.

Analysis

Section 46 of the Act provides that a landlord may end a tenancy if rent is unpaid on any day after the day is due, by giving notice to end the tenancy not earlier than 10 days after the date the tenant receives the notice. Section 52 sets out the form and content required for that notice. I accept Tenant A's undisputed evidence that February rent was paid to the Landlord. I also find that the Landlord did not serve an appropriate notice in relation to form and content. Accordingly, I cancel the Notice to end the tenancy. Although I informed the parties at the Hearing that I was prepared to make an Order of Possession for Tenant A, after considering the Tenant's uncertainty about returning to live at the unit, I decline to make an Order for Possession.

I accept Tenant A's undisputed evidence that he incurred out of pocket costs as a result of the actions of the Landlord and find that Tenant A is eligible for a monetary order in the amount of **\$772.21**.

I accept Tenant A's undisputed evidence that the Landlord has Tenant A's personal belongings, including furniture, in the Landlord's possession somewhere in storage. I find that Tenant A is eligible for the return of these items in undamaged condition to the rental unit forthwith at no cost to the Tenant. This Tenant may notify the Landlord as to where and when to deliver his personal belongings. Within 5 days of receiving this information from the Tenant, the Landlord must return the belongings to the delivery on the date and at a location identified by Tenant A. Should the Landlord fail to return these items at no cost to the Tenant and with no damage, and within 5 days of receiving notice for delivery, I grant Tenant A leave to reapply for the replacement costs of or damages to his belongings.

As Tenant A may not wish to return to the unit, I dismiss the Tenant's request to secure his access to the unit and to restrict the landlord's access to the unit.

I accept the undisputed evidence that the Landlord's actions caused the Tenant to be homeless. Given the egregious nature of the Landlord's actions and the significant harm caused to the Tenant, I find the Tenant has established a monetary claim for damages in the amount of **\$1,800.00**.

I find that the Tenant has established a monetary claim for \$2,572.00 (\$772.00 + 1,800.00.) The Tenant is also entitled to recovery of the \$100.00 filing fee, for a total entitlement of **\$2,672.00** ($\$772.00 + 1,800.00 + 100.00 = \$2,672.00$).

Conclusion

I Order the Landlord to return the personal belongings of Tenant A to Tenant A forthwith and no later than 5 days following the provision by the Tenant of a delivery time and location.

I grant Tenant A a Monetary Order in the amount of **\$2,672.00**. If necessary, this order may be filed in the Small Claims 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: March 18, 2011.

Residential Tenancy Branch