



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

For the tenant - CNC, CNR, DRI, MNDC

For the landlord – OPC, MND, FF, O

Introduction

This decision deals with three applications for dispute resolution, two brought by the tenant and one brought by the landlord. All the files were heard together. The tenant seeks to cancel the 10 Day Notice for unpaid rent and to cancel the One Month Notice for cause. The tenant also seeks to dispute an additional rent increase and seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement. The landlord seeks an Order of Possession for cause, a Monetary Order for damage to the rental unit, other issues and to recover her filing fee.

I am satisfied that both parties have been served with the Notices for this hearing pursuant to s. 89 of the *Act*.

Both parties, an interpreter for the landlord and witnesses appeared. All persons attending gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to dispute an additional rent increase?

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to an Order of Possession based on the Notice to End Tenancy for cause?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The tenant testifies that he moved into the rental unit on March 01, 2010. The landlord testifies she does not know when the tenancy started as she took over the buildings as landlord in July, 2010 and was not given copies of the tenancy agreements for the tenants residing there. Rent for this unit is \$550.00 per month and is due on the 1st of each month.

The landlord testifies that she gave the tenant a Rent Increase Notice on September 28, 2010. This notice states the rent for the unit will increase by \$13.00 per month from January 01, 2011. The landlord testifies the tenant did not pay the rent increase in January, 2011 and she asked him to pay his rent for February, 2011 early as she was going away. She states the tenant refused so she asked him to phone her and she would give him her bank details so he could pay his rent into her bank account on February 01, 2011. The landlord testifies that the tenant did not phone her and did not pay his rent on the day it was due so she served him with a 10 Day Notice to End Tenancy when she returned from her trip on February 09, 2011.

The landlord testifies that the tenant tried to pay \$550.00 towards his rent on February 11, 2011 but she would not accept it as it was not the full amount of the outstanding rent of \$576.00.

The tenant agrees the landlord served him with a 10 Day Notice to End Tenancy which stated he owed \$13.00 in rent for January, 2010 and \$563.00 for rent for February, 2010. The tenant states he was not given a Rent Increase Notice and only saw sight of this when the landlord filed her evidence. The tenant also states as his tenancy was only 10 months old on January 01, 2011 the landlord would not be entitled to give him a rent increase until March 01, 2011.

The tenant testifies that after receiving the 10 Day Notice to End Tenancy he attempted to pay his rent of \$550.00 to the landlord but she refused to accept it on February 11, 2011 so he had to get a money order and send it to the landlord by registered mail on February 14, 2011. The tenant has provided a copy of the money order and registered mail receipt.

The tenant seeks to cancel the Notice to End Tenancy. The tenant also seeks a Monetary Order to recover the cost of the money order and registered mail fees of \$16.25 because the landlord refused to accept his rent for February, 2011.

The tenant called his first witness (BN), who is a tenant in the building, to testify whether or not the landlord informed him that she was going to be away when rent was due. The tenants witness testifies that the landlord did ask him to pay his rent a few days early but she did not inform him that she was going to be away for an extended period of time. Other issues were discussed which were not relevant.

The landlord cross examines the witness and asked him if she had told him she was going to Alberta. The witness testifies that she did not tell him this just asked him to pay his rent early.

The landlord testifies that she served the tenant with a One Month Notice to End Tenancy on January 31, 2011 with a date to end tenancy as of February 08, 2011 due to the following reasons:

The tenant or a person permitted on the property by the tenant

- has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Has seriously jeopardized the health, safety or lawful right of another occupant or the landlord.

The tenant has engaged in illegal activity that has or is likely to:

- Adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

The landlord testifies she has received a lot of complaints about the tenant from other tenants. She states the complainants say the tenant plays loud music and has his television on very loud late at night. He entertains visitors late at night which disturbs other tenants; he smokes in his

room; he drinks heavily and his drunken behaviour scares other tenants; he speaks loudly with his door open; he has disconnected the smoke alarm in his unit; he has caused damage to his door frame when he came home drunk one night; he has made treats to another tenant which has made her life miserable.

The landlord testifies that the tenant has been served with three warning letters concerning his behaviour and she has concerns about safety issues with him smoking in his room if he has disconnected the smoke alarm.

The landlord called her witness (TH,) who is another tenant in the building, the landlord asks the tenant if she will end her tenancy if this tenant remains. The witness testifies that she will because of the disturbances, concerns about her safety and feelings of insecurity as she is the only female tenant in the building. The witness states the tenant will leave his television on loud and when he is drunk he thumps about in his room. The witness states she believes the landlord has given the tenant warning letters but the disturbances just increase. The witness states she has smelt smoke coming from the tenants' room on numerous occasions and has heard the smoke alarm going off from the room under the tenants unit and in the room next to the tenants unit which is the landlords' office.

The tenant cross examines this witness and asks how she can hear the smoke alarm going off in the unit underneath his, through 60 feet of concrete. The tenant asks the witness about his loud behaviour on January 19, 2011 as claimed in her complaint letter to the landlord and the thumping noise from his unit. The tenant asks the witness to explain what he does that makes her feel unsafe. The witness replies that noise travels through the building and she is able to hear the smoke alarms go off. The witness states the thumping noise travels down the corridor to her unit and she states she feels unsafe when the tenant comes home with guests after 10.00 p.m. because she is the only a female in the building. The witness states the landlord and this tenant are putting stress on her.

The tenant states the smoke alarm went off twice in the landlords' office once at 3.30 a.m. He states he discounted his alarm as it is on a circuit with the office and the room below his. The tenant states he has bought a battery operated alarm and has fitted this in his room. He states

he does not smoke in his room but on the balcony. He states he has never been unkind to the landlords witness and does not roam around drunk or have friends over drinking.

The landlord testifies that the tenant caused damage to the door frame to his room and has provided photographs of this damage. The landlord states that another tenant told her the tenant had come home drunk and kicked his own door in. The landlord agrees that she has no witnesses to the tenant causing this damage and it is only hearsay.

The tenant testifies that one day he went into the shared kitchen and someone had pulled the doors off his cupboards. The next morning he went to work and came home around 4.00 p.m. and found the door to his room had been pushed in and the frame was damaged. The tenant testifies he does not know who did this as he was at work at the time the damage must have occurred.

The tenant calls his witness (BN) and asks him if he checked his door with the landlord. The witness states the landlord asked him to go with her to check the door. When he got there the door was closed and she asked him to push it open as she was afraid to look inside. He states the landlord told him she thought some people were doing something up there. The witness states the tenant was not at home and the landlord said to him she has seen the tenants that used to live next door in the room that is now her office, and she thought they had smashed the tenants' door.

The landlord cross examines this witness and asks if she said someone had broken into the tenants room as she does not recall saying that. The witness replies that she had said that she had seen the two previous tenants who were brothers.

The tenant calls his 2nd witness (TB) and asks him what happened when he was at his room helping him repair his door. The witness testifies that a lady came up and started screaming and swearing at the tenant calling him names. He states it was so bad he had to leave.

The landlord cross examines this witness and asks what she was saying and did she tell him and the tenant that they were not repairing the door frame correctly. The witness testifies that

she was screaming at them telling them that they were not doing the repair in a proper way and it would have to be changed.

The tenant calls his third witness (BF) and asks him if he used to live in the room which is now the landlords office; he asks him how can the smoke alarm be set off; did he have any heat in his room and how does the landlord treat her tenants. The witness testifies that when he lived in the room his toaster would set off the smoke alarms and as he had no heat in his room he used his own heaters which would also set off the smoke alarms and it is the alarms in the landlords' office which would always go off. The witness also states he moved out because of the way the landlord treats her tenants.

The landlord cross examines this witness and asks if he or his brother ever smoked in their room, did they ever disconnect their smoke alarm and did their toaster set off the alarm. The witness testifies that they never smoked in the room, they never disconnected their smoke alarm and yes their toaster did set off the smoke alarm.

The landlord seeks an Order of Possession for cause and she seeks a Monetary Order of \$100.00 for the damage to the tenants' door. The landlord also seeks to recover her \$50.00 filing fee.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. With regard to the 10 Day Notice to End Tenancy. I find in this matter that the tenancy started on March 01, 2010, consequently, the landlord is not entitled to increase rent for the tenants unit before March 01, 2011. Therefore, the tenants rent remains at \$550.00. I further find the tenant attempted to pay his outstanding rent of \$550.00 to the landlord within the five days of receiving the 10 Day Notice. However, the landlord refused to accept this payment from the tenant and the tenant had to then get a money order and send it to the landlord by registered mail. As the tenant is deemed to have tried to pay his rent within the allowable time frame and it was the landlord who refused to accept it, the 10 Day Notice to End tenancy is cancelled.

With regard to the tenants application for a Monetary Order to recover his cost for a money order of \$6.50 and his registered mail fees of \$9.75 to send his rent to the landlord as she refused to accept his rent payment in person I find the tenant is entitled to recover the sum of **\$16.25** from the landlord and may deduct this from his next rent payment when it is due.

With regards to the One Month Notice to End Tenancy for cause; In this matter, the landlord has the burden of proof and must show that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. The landlord has provided copies of warning letters sent to the tenant concerning noise and she has provide one witness, another tenant, to give evidence about noise from the tenants unit. However, while I accept that the tenant has played music and had his television to loud on occasion I find this is not sufficient reason to end his tenancy.

I find the additional evidence presented to be insufficient to show the tenant is responsible for creating all the disturbances as described by the landlord or her witness. There is no evidence other than verbal testimony from the landlord and her witness to show the tenant smoked inside his unit which resulted in smoke alarms going off in other units. The tenant has stated he has had to disconnect his smoke alarm and fit a battery operated one as his would go off when there was a problem in the landlords office. There is no evidence to show the tenant or his guests are drunk and cause disturbances and the tenant contradicts the landlords' witnesses' testimony in this matter. The tenant also states he is not responsible for the damage to his door and the landlord has provided no witnesses who can testify that they saw the tenant damage his own door. Therefore in the absence of corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the landlords claim for damages of \$100.00; as it is my decision that the landlord is unable to provide corroborating evidence that the tenant was responsible for this damage to his door. Consequently the landlord has not met the burden of proof in this matter and her application for a Monetary Order for damages is dismissed.

As the landlord has been unsuccessful with her claim she must bear the cost of filing her own application.

Conclusion

The tenant's application to cancel the 10 Day Notice is upheld. The 10 Day Notice to End Tenancy for unpaid rent dated February 09, 2011 is cancelled and the tenancy will continue.

The tenant's application to dispute the additional rent increase is upheld and his rent remains at \$550.00 until such a time as the landlord issues a valid Rent Increase Notice to the tenant.

I further find the tenant is entitled to recover the sum of **\$16.25** from the landlord for his costs in paying his rent and may deduct that amount from his next rent payment when it is due and payable to the landlord.

The tenants' application to cancel the One Month Notice to End Tenancy for cause dated January 31, 2011 upheld. The Notice is cancelled and the tenancy will continue.

The landlords' application for an Order of Possession is dismissed with leave to reapply in the event significant disturbances occur from the tenant.

The landlords' application for a Monetary Order for damages to the rental unit is dismissed without leave to reapply.

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 03, 2011.

Residential Tenancy Branch