



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, FF
Tenant: CNR, MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with applications filed by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or 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 this application.

The parties both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The tenant also called a witness who gave affirmed testimony and was subject to cross examination by the landlord. The parties also provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. All evidence and the testimony provided by the parties and the witness have been reviewed and are considered in this Decision.

During the course of the hearing, the tenant stated that a previous order had been made at dispute resolution and the landlord stated that she had applied for a Review of that Decision. The result of this hearing would largely depend on whether or not the landlord is successful with a review, and this hearing was adjourned on May 6, 2011 to May 26, 2011 to provide an opportunity to receive the results. The Review Hearing was ultimately not granted and the Decision of that hearing remains in full force and effect.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began about 10 ½ years ago and the tenant still resides in the rental unit. Rent in the amount of \$725.00 is currently payable in advance on the 1st day of each month. No written tenancy agreement exists. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$325.00.

The tenant testified that the landlord attends at the 4 rental units within the building to collect rent, but never on the 1st of each month. On April 6, 2011 the landlord received an order from a Dispute Resolution Officer from a previous hearing wherein the landlord was ordered to pay the tenant \$1,850.00 by way of rent reduction, and then arrived at the tenant's unit on April 11, 2011 asking for April's rent. The tenant told the landlord that he wasn't required to pay due to the Decision, and the landlord told him she'd fight for it and wrote up a 10 Day Notice to end Tenancy for Unpaid Rent or Utilities but made an error on the document so left with it and said she would be back. About an hour and a half later he saw the landlord around the corner of the building and she had left a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities taped to the door of his rental unit. He stated he was also served with a 2 Month Notice to End Tenancy for Landlord's Use of Property personally on March 16, 2011. Then the landlord told the tenant on or about March 19, 2011 that the notice was cancelled.

The tenant further testified that the owner has required the landlord to put the gas bills in her name and she testified at the last hearing that it has never been in the tenant's name, but it was. All utilities are billed to the upstairs tenants and he paid them 40% of the hydro and gas bills. Those tenants didn't pay the bills so the gas and hydro were cut off. The landlord told the tenant to put the utilities in his name.

From February 25, 2011 to March 18, 2011 the tenant had no heat or hot water. The tenant made an application over the phone with Terasen Gas, and they wanted a letter from the landlord. At that time they needed a \$1,000.00 deposit. Owing at that time was about \$1,500.00 that the tenant also had to pay. He made on payment of about \$700.00 and told the landlord that no rent would be paid as a result. The landlord had responded that she didn't want it to work that way so she put the gas in her name. \$961.00 was reimbursed to the tenant by Terasen, so the tenant gave it to the landlord because the landlord had paid it. The hassles have caused the tenant to miss work

making phone calls and his job is suffering as a result of fighting eviction notices that are not valid. He stated that since he received a judgment from the previous dispute resolution hearing, it's been constant. He further stated during cross examination that he told the landlord not to come back until the judgment was satisfied, but the landlord insisted on writing up 10 Day Notices to End Tenancy for Unpaid Rent or Utilities even while the landlord had the judgment in her hand, and insisted on aggravating the tenant. The tenant claims \$2,000.00 in damages for the landlord's failure to comply with the *Act* and the Decision from the previous dispute resolution hearing.

The tenant's witness testified that he was present when the landlord requested rent on April 11, 2011. The tenant told the landlord that he didn't have to pay, and the landlord stated she wanted the rent and they were not going to honour that judgment. She stated she wants the rent and proceeded to write out an eviction notice. The tenant took out the garbage and found a notice to end tenancy taped to the door.

The witness further testified that he was present when the tenants in the upper unit were fighting. He stated that the fighting went on for months. He also stated that the hot water and heat were cut off, and the tenant in the upper unit had barricaded himself in his unit. The witness heard the landlord ask that tenant for rent and a screaming match took place in front of this tenant's window. The landlord told the tenant that he could move in with her when he told her that he needed heat and hot water. He also stated that the tenant worked all day and needed a shower before going to school at night.

The landlord stated that she and the owner felt that the tenant wasn't entitled to the judgment provided at the previous dispute resolution hearing because he disturbed others. The order arrived on April 6, 2011 and the owner did not feel the tenant was entitled to it. Also, the Decision states that the amount of the judgment could be applied to future rent payments, not current or past due rent.

The landlord also testified that the tenant had told her that the unit was not fit for human habitation and the landlord and owner took his word for it because he was taking a home inspector's course, but the rental unit was not examined by the landlord.

The landlord further testified that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued well before the judgment, and has nothing to do with that previous hearing or the resulting order. She stated that she told the tenant and his friend that she would be contesting the judgment, not that she was refusing to honour it.

The landlord also stated that she and the owner thought the judgment would commence for May's rent, and called the Residential Tenancy Branch. They were advised that the

landlord was within their rights to issue the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. She stated that she did not believe they were harassing the tenant, only following the advice from the Residential Tenancy Branch.

The landlord also testified that the owner wants the 2 Month Notice to End Tenancy for Landlord's Use of Property to remain in place for repairs to the rental unit, although she does not know if the unit actually needs to be vacant for the repairs to take place. Also, the tenant owes \$88.40 for utilities, and requests that amount to be subtracted from the amount of the judgment payable by the landlord.

Analysis

In the circumstances, I find that the landlord owed the tenant money and knew it before issuing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and therefore, the landlord's application for an Order of Possession for unpaid rent or utilities must be dismissed.

With respect to the landlord's application for a monetary order for unpaid rent or utilities, I further find that the tenant is not in arrears of rent, and therefore, the landlord's application for a monetary order for unpaid rent or utilities must also be dismissed. The order made at dispute resolution was for a total of \$1,850.00, and the tenant is entitled to apply \$725.00 of that judgment to rent for each of the months of April and May, 2011, and to utilities owing in the amount of \$88.40. The landlord currently owes the tenant \$311.60 which will be applied to the rent for June, 2011, and the tenant will owe the landlord the sum of \$413.40.

With respect to the 2 Month Notice to End Tenancy for Landlord's Use of Property, I have no application before me by either party to deal with that notice, but I have the evidence of the landlord that no inspection has taken place in the rental unit, so the landlord doesn't even know whether or not the unit must be vacant for repairs to be effected. The *Residential Tenancy Act* states:

49 (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;

- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager, or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

It is clear in the evidence that the landlord has no permits in place, and even if none are required, the landlord does not know whether or not the unit needs to be vacant. Therefore, I find that the landlord has issued at least 2 notices to end the tenancy that are contrary to the *Act*. I therefore find that the tenant's application for a monetary order is justified.

In determining the amount to award the tenant for the landlord's failure to comply with the *Act*, I must take into consideration the extent of the disturbance that the landlord's actions caused the tenant. I note that the Dispute Resolution Officer at the previous hearing stated that, "It is impossible to establish a formula under which one can calculate a precise amount to which the tenant would be entitled and as a result, any award is arbitrary." I agree with that statement, and the Dispute Resolution Officer at that time found that \$50.00 per month would be adequate for the landlord's failure to provide the tenant with his right to quiet enjoyment. I find that the landlord has continued to deprive the tenant of his right to quiet enjoyment by issuing invalid notices to end the tenancy, and I find that the amount ought to escalate. Therefore, I find that the tenant is entitled to a monetary order in the amount of \$300.00, being \$100.00 per month since the issuance of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for unpaid rent or utilities is hereby dismissed.

The landlord's application for a monetary order for unpaid rent or utilities is also dismissed.

The tenant's application for an order cancelling a notice to end tenancy for unpaid rent or utilities is hereby allowed, and I order that the notice is cancelled.

The tenant's application for a monetary order is hereby awarded at \$350.00, which includes the filing fee for the cost of this application, and I direct that the tenant be permitted to deduct this amount from any rent owing to the landlord until the award has been satisfied.

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: June 08, 2011.

Residential Tenancy Branch