

DECISION

Dispute Codes: ET, CNR, MNDC, RR, FF

Introduction

This Dispute Resolution hearing was convened to deal with the landlord's application seeking an order to end the tenancy early without notice to the tenant. The hearing was also convened to hear the tenant's application seeking to cancel a One-Month Notice to End Tenancy for Cause, to reduce rent for repairs, services or facilities not provided and to be compensated for utilities paid by the tenant.

Both the landlord and the tenant appeared and gave testimony.

Issue(s) to be Decided

- Is the landlord entitled to end the tenancy without notice pursuant to section 56(1) of the Act?
- Should the One-Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to a rent abatement for repairs, services or facilities not provided?
- Is the tenant entitled to compensation for utilities paid by the tenant?

Preliminary Matter

The tenant had challenged the named individual and the named corporation's right to act on behalf of the landlord. However, it was found that the tenancy agreement signed by the tenant showed both this named individual and the corporation as landlord, or agent for the landlord.

In relation to a rental unit, the Act provides the following definition of "Landlord", that includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this

I find that those named as the applicant, "*landlord*", in the landlord's application and as respondent, "*landlord*", in the tenant's application do successfully meet the definition of landlord under the Act.

Background and Evidence: Landlord's Application to End Tenancy

The tenancy began in September 2010 with rent of \$2,200.00 per month. A security deposit of \$1,100.00 was paid.

The landlord testified that the tenancy was subject to serious problems, the most prevalent of which was the fact that the tenant had disconnected the utilities and persists in refusing to cooperate with the landlord in having the services reconnected. The landlord testified that the fact that the utilities were disconnected caused a situation in which the landlord's property was placed at risk and subject to sanctions for violating bylaws and municipal standards. The landlord testified that an inspection was required before services could be restored and the tenant had interfered with this process by changing the locks. The landlord testified that, after the landlord gained entry to inspect the services with a professional, the tenant again tampered with the connections. This action made it necessary for the landlord to have the inspection done again at great cost and inconvenience, as well as continued risk to the premises. According to the landlord, the tenant's hostile conduct towards other residents and his role in terminating the utilities, also made it impossible for the landlord to rent out any of the other units in the building and caused existing residents had to leave. The landlord submitted the original signed tenancy agreement between the landlord and the tenant, which indicated that the tenant was responsible to pay utilities and to have the utility accounts in his name.

The tenant disputed all of the landlord's testimony. The tenant denied interfering with the inspections or reconnection of the utilities and disputed the allegations that he bothered the other residents causing them to leave.

The tenant stated that he could not have tampered with the utility hook-ups as the landlord locked him out of the unit. The tenant testified that the utilities were terminated

because the landlord refused to pay the accounts, which, according to the tenant, were not the tenant's responsibility under the tenancy agreement. The tenant submitted a copy of the tenancy agreement that had checkmarks to indicate: "*Utilities are included in the rent*". However, this document also had a checkmark beside the notation; "*Utilities are NOT included in the rent*" and a checkmark beside another notation indicating that "*The owner agrees to pay the tenant 1/3 of the Gas and Hydro costs upon receipt of the bills monthly.*"

The landlord testified that the tenant had clearly altered the signed agreement, after the fact, by manually placing a checkmark beside the notation "*Utilities are included in the rent*". The landlord pointed out that the original agreement, later submitted into evidence by the landlord at my request, did not show any checkmark beside this notation nor beside the notation that "hot water" was included.

Analysis: Landlord's Application to End Tenancy

Section 56 of the Residential Tenancy Act provides that a landlord may make an application for dispute resolution to request an order ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 [*landlord's notice: cause*], and granting the landlord an order of possession in respect of the rental unit.

Before issuing an Order to end the Tenancy under section 56 of the Act, a Dispute Resolution Officer must be satisfied under section 56(2) that the following has been proven: a) the tenant or a person permitted on the residential property by the tenant has done any of the following: 1) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property; 2) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant; 3) put the landlord's property at significant risk; or 4) engaged in illegal activity that has caused or is likely to cause damage to the landlord's property, has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; caused extraordinary damage to the residential property.

In addition to the above, the landlord must also prove that it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect.

Based on the testimony of the landlord and the evidence, I find that the tenancy agreement clearly indicated that the tenant was responsible for paying the utilities. I find that, based on the alarming behaviour of the tenant, this situation does satisfy the

criteria specified in section 56(2)(a) of the Act. Because of the nature of the conduct in question and the serious risk it invites, I find that the circumstances also meet the second threshold under 56(2)(b). I find it would be unreasonable, or unfair to the landlord or other occupants of the residential property to wait for a notice to end the tenancy under section 47 [*landlord's notice: cause*] to take effect. I find that the landlord's property and other residents are at risk and the situation needs to be addressed in an urgent manner without further delay.

Accordingly, I find that the landlord is entitled to an immediate Order of Possession.

Background and Evidence: Tenant's Application

The tenant's application had indicated that the tenant was requesting that a One-Month Notice to End Tenancy for Cause be cancelled. No copy of this Notice was in evidence and the tenant denied receiving the Notice, as he could not access the premises, having allegedly been locked out by the landlord. However, the tenant decided to dispute it as he was told by the landlord that such a Notice had been served.

With respect to the monetary claim, the tenant testified that he had paid a substantial amount of utility costs which should have been included in his rent and the tenant is seeking reimbursement. Copies of utility bills were submitted. Some of the invoices showed the account in the tenant's name and those from earlier dates were in the landlord's name. The tenant is claiming \$3,000.00 in compensation for the cost of the utilities and a rent abatement for being deprived of the use and access of his unit due to the termination of hydro and gas services.

The landlord stated that the tenant was solely responsible for any inconvenience he had suffered because of his unauthorized alterations to the utility connections and wilful neglect in paying the accounts. The landlord testified that the tenant had already been granted rent reductions during the tenancy to compensate for the landlord's portion of the utility costs and in additions, the tenant had taken it upon himself to deduct monies allegedly owed from his rent payments. The landlord disagreed with the tenant's claims.

Analysis: Tenant's application

With respect to the portion of the tenant's application relating to cancelling the One-Month Notice to End Tenancy for Cause , I find that, given the tenancy is ending, there is no need to make a determination on this matter.

With respect to the tenant's monetary claims for compensation for payment of utilities and rent reduction for loss of access, use and enjoyment of the rental premises, I find

that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and evidence furnished must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that the tenant's claims for reimbursement of utilities is not supported by the Act nor the agreement. The tenant had signed a tenancy agreement that required him to pay for utilities separately from, and in addition to, the rent. I find it evident that the tenant's failure to comply with this term in the agreement resulted in the utilities being disconnected for himself and others in the building and was not due to a contravention of the Act or Agreement by the landlord. .

I also accept the landlord's testimony, and evidence submitted, confirming that the tenant was already fully reimbursed for the landlord's portion of the utilities. Therefore the tenant's claim for reimbursement for utilities paid must be dismissed.

With respect to the tenant's loss of access and enjoyment of his suite, I find that this deprivation did not result from any violation of the Act or agreement by the landlord. Therefore, the claim failed to sufficiently satisfy element two of the test for damages and must therefore be dismissed.

Conclusion

Based on the evidence and testimony, I hereby order that the tenant's application be dismissed in its entirety without leave to reapply.

Based on the evidence and testimony, I hereby order that this tenancy is ended and I grant the Landlord an immediate Order of Possession. This decision is final and

binding. The order must be served on the Respondent and, if necessary, may be filed in the Supreme Court and enforced as an order of that Court.

The landlord is entitled to retain \$50.00 to reimburse for the filing fee from the tenant's security deposit, the remainder of which should be administered according to section 38 of 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: July 15, 2011.

Residential Tenancy Branch