



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, OLC, FF, O

Introduction

This hearing was scheduled to deal with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and more time to make the application; monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for compliance by the landlord; recovery of the filing fee; and, other issues. Both parties appeared at the hearing and confirmed the landlord was served with the tenant's evidence via registered mail. The landlord did not provide any documentary evidence or submissions in response to the tenant's claims.

Shortly after the hearing commenced the landlord was warned several times to stop interrupting the tenant and myself. The landlord would not comply with these instructions and was asked to leave the teleconference call. The landlord would not leave the conference call voluntarily and I had to exclude him from the remainder of the call. I continued to hear from the tenant without the landlord present.

Although the tenant did not agree with the landlord's issuance of the Notice to End Tenancy the tenant stated that he will be vacating the rental unit by the stated effective date of June 30, 2011. As the tenancy would be ending in the days that followed I found it unnecessary to further consider the tenant's request to cancel the Notice or request for Orders for compliance. Therefore, the remainder of this decision deals with the tenant's monetary claims only.

Issue(s) to be Decided

1. Has the tenant established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced April 1, 2011 and the tenant is required to pay rent of \$1,200.00 on the 1st day of every month. The tenant paid a \$600.00 security deposit. The tenancy agreement provides that the tenant's first month of rent was free; however,

the tenant was required to pay last month's rent by the landlord. The tenant put a stop payment on June's rent cheque.

The tenant indicated he is seeking compensation of \$2,950.00 on his Application for Dispute Resolution; however, the tenant completed a Monetary Order worksheet indicating he is seeking \$1,500.00 from the landlord for the following items:

Moving expenses	\$ 300.00
Loss of cable services	600.00
Emotional hardship	600.00

The tenant also indicated in the details of dispute that there was an overpayment of rent since he had to pay "last month's rent" in advance.

The tenant submitted that the landlord should compensate him for anticipated moving costs because the landlord is forcing the tenant to move by serving him with an eviction notice, not providing services, and creating an unliveable environment.

The tenant submitted that cable television was included in the tenancy agreement and the landlord was to provide him with a cable box in order for the tenant to receive satellite signal from the landlord's satellite service. The landlord had given the tenant a cable box and then wanted to exchange it. The landlord then disconnected service to the tenant's unit. The tenant claimed that to obtain cablevision in the remote area is \$300.00 per month based on his previous experience with cablevision in the area.

The tenant submitted that the landlord has used profanity and threats of violence against the tenant on May 2, 2011 and May 8, 2011. On May 2, 2011 the landlord showed up at the rental unit with a contractor and when the tenant asked that the landlord return at another time the landlord was adamant the tenant provide access and used profanity towards the tenant. The tenant did not grant access to the rental unit. The landlord wrote a letter to the tenant dated May 2, 2011 providing the tenant with 24 hour notice the landlord would be entering the unit May 3, 2011 to perform repairs.

On May 3, 2011 the landlord was given access to the rental unit in order to perform some repairs. The landlord cut drywall and left drywall dust and debris all over the tenant's desk. The tenant was still cleaning up dust three weeks later.

On May 8, 2011 the tenant was working in the garage when the landlord entered the garage. A discussion turned into a confrontation whereby the landlord motioned towards the tenant in an aggressive manner and the landlord swore obscenities at the

tenant. The landlord also tried to bully the tenant by telling the tenant to “take it or leave it” and “you tenant, me landlord” . The tenant escorted the landlord to the door but the landlord kept putting his foot in the door.

The tenant wrote a letter to the landlord on May 11, 2011 and the landlord responded in writing on May 12, 2011. I was provided copies of both of these letters by the tenant. I was also provided copies of the tenancy agreement, the addendum, and move-in inspection report.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

2. That the other party violated the Act, regulations, or tenancy agreement;
3. That the violation caused the party making the application to incur damages or loss as a result of the violation;
4. The value of the loss; and,
5. That the party making the application did whatever was reasonable to minimize the damage or loss.

The addendum to the tenancy agreement acknowledged receipt of last month's rent from the tenant. I find the landlord not entitled to collect last month's rent at the beginning of the tenancy. The Act requires tenant's to pay rent when due in accordance with the terms of their tenancy agreement. The tenancy agreement requires the tenant to pay rent on the 1st day of every month. Thus, the rent for the last month of tenancy would be payable on the 1st day of that month.

In light of the above, I accept the tenant overpaid rent at the beginning of the tenancy; however, I am satisfied the tenant has since utilized that overpayment by stopping payment for the June 2011 rent cheque. Therefore, I make no award for recovery of the payment of last month's rent.

With respect to the tenant's claims for moving expenses I deny this claim for the following reasons. The amount claimed in anticipated and has not been incurred. The tenant is choosing to vacate the rental unit rather than proceed to find an alternative remedy through dispute resolution.

With respect to loss of cable or satellite TV services I deny this claim. Upon review of the tenancy agreement, the addendum to the tenancy agreement and the move-in inspection report I find no reference to provision of cablevision or satellite TV service. Therefore, I find the tenant has not established this was a service or facility to be provided to him under the terms of tenancy or a violation of this term by the landlord.

With respect to the tenant's claim for emotional hardship I find the tenant's claim has merit. Section 29 of the Act provides that a tenant is entitled to quiet enjoyment of the rental unit and residential property and this includes freedom from unreasonable disturbance or significant interference. The tenant alleged the landlord acted aggressively and abusively towards him on at least two occasions and I find the tenant's description of the events to meet that definition. I accept the tenant's submissions are credible as the landlord exhibited similar behaviour during the brief time the landlord was in attendance at the hearing. Therefore, I grant the tenant's request for \$600.00 or one-half month's compensation for loss of quiet enjoyment.

As I have found merit in the tenant's application, I also award the filing fee to the tenant. The tenant is provided a Monetary Order in the amount of \$650.00 to serve upon the landlord and enforce in Provincial Court (Small Claims) if the landlord does not satisfy the Monetary Order.

Conclusion

The tenant has been provided a Monetary Order in the amount of \$650.00 to serve upon the landlord.

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 13, 2011.

Residential Tenancy Branch