



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, MNSD, MNDC, OLC, FF

Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession for unpaid rent; and a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the tenant's security deposit. Both parties appeared at the hearing.

Preliminary matters

The landlord raised an issue of service of documents upon him. The landlord stated that the tenant attempted to serve him at his mother's house and left the hearing package at the front door. The tenant explained that the landlord's mother had acted as agent for the landlord in the past, and the landlord had not provided the tenant with a service address. The landlord acknowledged his mother acted as his agent for much of the tenancy and there was no service address had been provided for the landlord. Considering the testimony of the parties and upon confirming the landlord did receive the hearing package, I deemed the landlord sufficiently served with the tenant's hearing documents under section 71(2) of the Act.

I also heard the landlord served his hearing package upon the tenant's spouse. The tenant acknowledged receipt of the package and was prepared to proceed with dealing with the landlord's application. Accordingly, I considered the tenant sufficiently served as well.

At the commencement of the hearing I heard that the tenant has since vacated the rental unit. As the tenancy has ended, I found it unnecessary to deal with the requests to cancel the Notice to End Tenancy, issue an Order of Possession, or issue orders for compliance. Rather, the remainder of this decision pertains to the parties respective monetary claims against the other.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?
2. Has the landlord established an entitlement to compensation from the tenant for unpaid rent and damage or loss under the Act, regulations or tenancy agreement?
3. Is the landlord authorized to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The parties provided the following undisputed evidence. The tenancy commenced May 15, 2010 under a verbal tenancy agreement. The tenants paid a \$400.00 security deposit and were required to pay rent of \$1,000.00 on the 1st day of every month. On May 30, 2011 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) with an effective date of August 1, 2011. The tenant withheld \$400.00 from rent for June 2011 and did not pay any rent for July 2011. The landlord served a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant's spouse on July 1, 2011. The 10 Day Notice indicates that \$1,400.00 was outstanding as of July 1, 2011. The tenant vacated the rental unit August 1, 2011.

The parties were in dispute as to whether the second page of the 2 Month Notice was served upon the tenant. The landlord claimed that the second page was served. The tenant claimed it was not; however, the tenant understood from a message from the landlord that the reason for ending the tenancy is because the landlord would be moving into the rental unit. The tenant accepted this reason and did not dispute the Notice. The landlord confirmed that the reason for ending the tenancy is because he is moving into the rental unit.

Tenant's claim for compensation

The tenant is seeking compensation of \$400.00 for the following reasons:

- The hood fan over the stove did not work until June 28, 2010 which resulted in the smoke alarm going off frequently and the tenant not cooking at home;
- The rental unit was covered in sawdust at the beginning of the tenancy;
- The landlord failed to prepare a written tenancy agreement, move-in inspection report, or Form K for the strata council, causing the tenant grief;
- The landlord asked for a security deposit when there had been no agreement for the tenant to pay one, causing stress for the tenant;

- The landlord issued an improper 2 Month Notice which lead to a dispute about compensation for the tenant; and,
- The landlord sought rent payment for July 2011 rent when no rent was due.

The landlord responded to the tenant's request for compensation as follows:

- The rental unit was in the process of being remediated when the tenant viewed the rental unit and was aware of its condition;
- The tenancy was treated very casually as the tenant's mother and the landlord's mother are neighbours and friends;
- The landlord was unaware that the stove hood fan was not working as his mother was overseeing the repair work and acting as his agent; and,
- The landlord did serve both pages of the 2 Month Notice.

Landlord's claim for compensation

In making this application, the landlord sought compensation for unpaid rent for June 2011 in the amount of \$400.00 plus compensation for five days of rent for August to reflect the hearing date and time necessary to enforce an Order of Possession. The landlord did not request rent for July 2011 as the landlord understands the tenant is entitled to one month of compensation due to the 2 Month Notice.

The tenant explained that he withheld \$400.00 from June's rent because he believed the landlord would not return his security deposit to him. He also took the landlord's silence on the matter as an indication the landlord agreed to this arrangement.

Analysis

Upon consideration of the evidence and submissions before me I provide the following reasons and findings with respect to each of the applications before me.

Tenant's application

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:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Having heard from the parties, I am satisfied the landlord violated several sections of the Act, including failure to prepare a written tenancy agreement and condition inspection report. The repair invoice for the hood fan satisfies me that the hood fan was repaired June 28, 2010, approximately six weeks after the tenancy commenced. I also accept that at the beginning of the tenancy the unit was not sufficiently cleaned based upon the tenant's testimony and the landlord's response. However, as outlined above, in order to award compensation for these violations I must be satisfied the tenant suffered a loss as a result of the violation, verification of the value of the loss, and evidence that the tenant took reasonable steps to minimize his loss.

The above described violations occurred at the beginning of the tenancy yet I do not find evidence that the tenant, in a timely manner, requested the landlord correct these breaches or communication to the landlord that these breaches were causing the tenant to suffer a loss. Nor do I see evidence to corroborate the tenant's submission that he had to eat at restaurants more often because of the hood fan. Therefore, I conclude that these violations resulted in a minimal loss to the tenant and I make no award for compensation.

With respect to requesting a security deposit from the tenant, I find insufficient evidence that payment of a security deposit caused the tenant to incur a loss. If the tenant was of the position a security deposit was not payable under the terms of the tenancy agreement then he did not have to pay one. Yet, he did pay a deposit and did not complain of such payment until making this application, more than a year later. Therefore, I make no award for this issue.

I accept, based on the balance of probabilities, that the landlord failed to give the tenant the second page of the 2 Month Notice, as evidence by the tenant's email to the landlord on June 1, 2011. I can find no motivation for the tenant to write to the landlord on June 1, 2011 to inform him of the missing page if it was in fact it was served. However, the tenant also states in his June 1, 2011 email to the landlord that he is familiar with the contents of the second page and the tenant testified that he was aware of the reason the landlord issued the Notice; therefore, I do not find sufficient evidence of any loss incurred by the tenant as a result of the missing second page and I make no award for compensation to the tenant for this matter.

With respect to receiving a 10 Day Notice for unpaid rent which included rent for July 2011 I make no award for compensation to the tenant. Where a tenant receives a

Notice to End Tenancy which the tenant believes is invalid the tenant's remedy is to dispute the Notice, which the tenant did in this case. Receiving an invalid notice is not a basis for the tenant to receive compensation unless it can be shown that the landlord was trying to harass or persecute the tenant. I find insufficient evidence the landlord was acting in such a manner. Rather, the 10 Day Notice also included unpaid rent for June 2011 of \$400.00 which the tenant did owe; therefore, there was some basis for the issuance of the Notice.

In light of the above findings, I deny the tenant's claim for compensation from the landlord.

Landlord's application

Section 26 of the Act requires that a tenant pay rent when due to the landlord under the terms of the tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has the legal right to withhold rent. I do not find sufficient evidence that the tenant had the legal right to withhold rent for June 2011. I do not accept silence as affirmative consent for withholding rent. Nor is a suspicion that the security deposit will not be returned basis for withholding rent. Therefore, I find the landlord entitled to unpaid rent of \$400.00 for June 2011 and I award this amount to the landlord.

Since the landlord issued and the tenant has accepted a 2 Month Notice to End Tenancy for Landlord's Use, which both parties agree was issued so that the landlord could reside in the rental unit, the tenant is entitled to one month of compensation under section 51(1) of the Act. The tenant received the benefit of not paying rent for July 2011 and one day in August 2011; therefore, I award the landlord one day of rent. I have pro-rated the monthly rent and award the landlord \$32.26 [$\$1,000.00 \times 1/31$ days].

As further information for both parties, I find the landlord remains obligated to ensure he, or close family member, resides in the rental unit for at least six months beginning from a reasonable time after the tenancy ended. Otherwise, the tenant may be entitled to seek additional compensation from the landlord under section 51(2) of the Act.

I authorize the landlord to retain tenant's security deposit in satisfaction of the rent owed by tenant for June 2011.

Monetary Order

After deducting the security deposit from the amounts owed the landlord, the landlord is still owed \$32.26 by the tenant. However, I do not provide the landlord with a Monetary

Order for this amount as I award the tenant \$32.26 towards the filing fee he paid for his application.

Awards for recovery of the filing fee are provided under section 72 of the Act and are awarded at the discretion of the director. I find both parties have violated the Act and their actions have lead to these applications; however, I find more evidence of violation on part of the landlord and that is the reason for awarding the tenant a portion of the filing fee he paid.

In light of the above, the awards to each party have been completely offset and neither party is provided a Monetary Order.

Conclusion

Each party has been granted a monetary award of \$32.26. The awards have been offset and no Monetary Order is provided to either party.

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: August 19, 2011.

Residential Tenancy Branch