



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC MNDC OLC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to obtain Orders to have the Landlord comply with the Act, regulation or tenancy agreement, allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act* and tenancy agreement by paying rent late?
2. If so, has the Landlord issued and served a 1 Month Notice to end tenancy for cause in accordance with section 47(1)(b) of the Act?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain monetary compensation, an Order to have the Landlord comply, and to reduce his future rent as a result of that breach?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began September 1, 2009 and switched to a month to month tenancy after August 31, 2010. Rent is payable on the first of each month in the amount of \$1,000.00 and on August 19, 2009 the Tenant paid \$500.00 as the security deposit.

The Tenant affirmed that he did not receive the Landlord's evidence until September 24, 2011 which was sent to him via registered mail on September 20, 2011. He confirmed receiving the 1 Month Notice to end tenancy for cause (the Notice) via registered mail a few days prior to filing his application for dispute resolution on August 24, 2011.

The Landlord affirmed that up until August 2011 the Tenant had always paid his rent by directly depositing the funds into her bank account. When rent was not paid in August she contacted the Tenant who told her he had changed the method of payment and that he had sent her post dated cheques in the mail. She stated she never received the cheques that the Tenant claims he mailed and rent was not paid until August 11, 2011, the same day she issued the Notice. Prior to August 2011 rent was late three more times in 2011 however the Landlord could only locate two previous dates which were May 2, 2011 and January 2, 2011.

The Tenant confirmed rent was paid late in August, May, and January 2011 and argued that he had suffered numerous other frustrating and major issues with this tenancy which caused him to pay the rent late. He confirmed he did not have an Order issued by the *Residential Tenancy Branch* granting him authority to pay his rent late nor did he enter into a written agreement with the Landlord to change the method or date rent was to be paid. He confirmed he had no communication with the Landlord prior to changing the method of paying his rent.

The Tenant is seeking monetary compensation of \$200.00 (\$20.00 x 10 months) because the Landlord did not install blinds in the unit as she agreed to on July 19, 2010. He said the sun comes through the windows from May through to September which heats up his rental unit and causes his air conditioner to run "extensively". He acknowledged that they had attended dispute resolution on March 23, 2011 and that he made no effort to discuss this issue during that hearing. In addition to the \$200.00 compensation he is also seeking reduced rent until the blinds are installed as agreed.

The other part of his claim pertains to his guest that he allowed to occupy the rental unit and whom the Landlord entered into a tenancy agreement with on January 25, 2011. He confirmed this issue was discussed during the March 23, 2011 hearing and that the Dispute Resolution Officer told him that this was not part of that hearing and the Tenant should seek a resolution outside of that hearing. The Tenant stated the Landlord failed to cancel this other tenancy agreement. The Tenant acknowledged that he did not take any further action pertaining to this matter until he filed this application on August 24, 2011. He confirmed that he was not seeking to have his guest move out of the rental unit in March 2011 and confirmed he had allowed this guest to occupy the rental unit for a fee or rent paid directly to the Tenant. He did not run into problems until June 2011

when he attempted to have his guest evicted. He sought assistance from the Landlord who informed his guest that his tenancy agreement was void but this did not happen until June 2011, after which he had suffered a loss from his guest stealing his possessions. When asked why he did not seek action immediately following the March 2011 hearing the Tenant responded by saying, "I probably should have" and then stated he was not seeking to have his guest move out at that time.

The Landlord confirmed that during the March 2011 hearing they discussed the tenancy agreement she had entered into with the Tenant's guest. She stated the Dispute Resolution Officer informed her that tenancy agreement was null and void because of the manner she entered into it. She felt that no further action was required because of what was said in that hearing. It was not until she had the request for assistance from the Tenant in June that she sent the text message to his guest reminding him that his tenancy agreement had been voided in March 2011.

In response to the Tenant's claim for compensation for not having blinds installed, the Landlord advised there was venetian blinds on every window in the rental unit and that back in 2010 the Tenant was requesting that she have a second set of blinds installed. She agreed to look into to having the windows measured for this however once she found out how expensive it was going to be she decided against having the second set installed. She confirmed the issue of blinds was not discussed in the March 2011 hearing. In closing, she stated that she did not require anything further.

Analysis

The Landlord did not provide copies of her evidence in accordance with section 4.1(a) of the *Residential Tenancy Branch Rules of Procedure* which provides that all evidence must be received by the *Residential Tenancy Branch* and must be served on the applicant as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the Definitions part of the *Rules of Procedure*.

Considering evidence that has not been received by the *Residential Tenancy Branch* or served on the other party in accordance with the *Residential Tenancy Branch Rules of Procedure* would create prejudice to the other party who would be limited to compiling a response. Therefore as the respondent Landlord has not served their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure* I find that pursuant to section 11.5 of the *Residential Tenancy Branch Rules of Procedure*, the Landlord's evidence will not be considered in my decision. I did however consider the Landlord's testimony.

Section 47(1)(b) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying rent.

Section 38 of the *Residential Tenancy Policy Guideline* stipulates that to meet the test for repeated late payment of rent there must be a minimum of three occurrences of late payment. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

In this case the evidence supports there is a pattern of late payment of rent with occurrences as recent as January 2011, May 2011, and August 2011. Accordingly, I find the Landlord has met the burden of proof for issuing the Notice.

Upon review of the 1 Month Notice to End Tenancy for cause for repeated late payment of rent, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act.

Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice. Accordingly I dismiss the Tenant's request to cancel the Notice and this tenancy ends on the effective date of **September 30, 2011 at 1:00 p.m.**

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The Tenant seeks compensation of \$200.00, (ten months at \$20.00 per month) because the Landlord did not follow through with installing a second set of window blinds. Although there is evidence the parties had discussions via e-mail about arranging time to have the windows measured for additional blinds there is insufficient evidence to support that the Landlord's decision to not go ahead with installation is a breach of the Act, regulation, or tenancy agreement. Furthermore, there is insufficient evidence the Tenant suffered a loss as a result of the Landlord's decision not to install a second set

of window blinds. As per the aforementioned I find the Tenant has not met the burden of proof and I dismiss his claim of \$200.00.

The Tenant is seeking monetary compensation "as available" for losses suffered when his guest, an occupant who he allowed into the unit and who was paying rent to the Tenant, stole his possessions. An issue was raised in the March 2011 hearing relating to concerns that the Landlord had entered into a tenancy agreement with the Tenant's guest/occupant without the Tenant's consent. The Tenant was advised in the March 2011 hearing to resolve this matter with the Landlord after the hearing or make an application for dispute resolution to resolve the matter as it did not form part of his application being heard at that time.

The evidence supports the Tenant made no effort to seek a remedy for his concerns surrounding this other tenancy agreement and he continued to collect rent and allow his guest/occupant to reside in the rental unit for several months. The Tenant took no action until he wanted to have his guest/occupant evicted from the unit.

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

After careful consideration of the above, I find there to be insufficient evidence to support the following: (1) the Landlord committed a breach of the Act, regulation or tenancy agreement; (2) the value of the loss; and (3) that the Tenant did what was reasonable to minimize the damage or loss. Accordingly I dismiss the Tenant's claim.

The remainder of the Tenant's application is to obtain an Order to have the Landlord comply with the Act and to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided. Having found the Notice to be valid and the tenancy ending on September 30, 2011 I find these two requests to have no merit and they are hereby dismissed.

I note that on the Tenant's application he lists as part of his claim \$12 for mailing expenses. The Tenant did not provide testimony in relation to this claim nor did he provide evidence to prove the amount claimed. Accordingly I find there to be insufficient evidence and I dismiss this claim.

The Tenant has not been successful with his application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's application.

The 1 Month Notice to End Tenancy issued August 11, 2011, is of FULL FORCE AND EFFECT and the tenancy ends on the effective date, **September 30, 2011 at 1:00 p.m.**

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: September 27, 2011.

Residential Tenancy Branch