



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, O, RR

Introduction

This matter dealt with an application by the tenant to obtain an Order for the landlord to comply with the Residential Tenancy Act (Act), regulations or tenancy agreement, other issues and an Order to reduce rent for services or facilities agreed upon but not provided. At the outset of the hearing the tenant withdrew his application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on August 11, 2011.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to reduce his rent for services or facilities agreed upon but not provided?

Background and Evidence

Both parties agree that the tenant moved into this unit on January 30, 2011. His rent was agreed at \$25.00 per day which was paid monthly according to when the landlord collected it. Both parties also agree that this was a fixed term arrangement for three months and would expire on March 31, 2011. The tenant paid a security deposit of \$350.00 on February 17, 2011.

The tenant testifies that he signed a tenancy agreement and contained within that agreement was a clause that he would agree to vacate the unit with 24 hours notice should an emergency arise where the unit was required for its intended purpose of the Hospice. He agrees this agreement also states that the accommodation is for intermediate stay until appropriate family accommodation is obtained. The tenant testifies that since March 31, 2011 he was allowed to remain in the rental unit and the landlord accepted rent from him. The tenant submits that in doing so the landlord has entered into a verbal tenancy agreement with him for a month to month tenancy as the fixed term occupation has now expired.

The tenant testifies the landlord has wanted to evict him and has sent him a letter advising him that he must vacate the premises by July 31, 2011. The tenant has provided a copy of this letter in evidence. This letter also states that the tenant was only allowed to stay after March 31, 2011 as the unit was not required by the society for other occupants or needs but was just for his emergency use because no other accommodation was available to him in January, 2011.

The tenant states as this now falls under the *Act* the landlord is required to serve him with a Notice to End Tenancy on an approved form and seeks an Order for the landlord to comply with the *Act* in this matter. The tenant does state however that he has now made plans to vacate the rental unit by October, 15, 2011.

The tenant testifies that throughout his occupation in the unit he has received cable television and telephone services. He states that since August, 2011 these services were

removed by the landlord. The tenant seeks to recover the sum of \$100.00 per month since August, 2011 for the loss of these services.

The landlord disputes the tenants' claims. The landlord testifies that this was not a tenancy agreement and the Residential Tenancy Branch do not have jurisdiction in this matter. The landlord testifies that this original agreement signed by the tenant was not a tenancy agreement but was just a temporary arrangement due to an emergency situation where the tenant was employed by the district and there was no accommodation for him to rent at that time. The landlord testifies that the society leases these units from BC Housing and the hospice enjoy low rent for these units to be used for emergency situations. Because of this arrangement a daily rent is applied to anyone occupying the unit. The landlord testifies that the tenant was supposed to find alternative accommodation by the end of March, 2011. He states the *Act* does not apply because this is deemed to have been emergency shelter for transitional housing. The tenant was allowed to continue to reside in the unit at the request of the Major due to his circumstances. The landlord testifies this unit is required for the hospice and palliative care and not to provide low cost housing for someone who does not qualify unless they can demonstrate an emergency situation. The landlord testifies the normal rate for a unit this size would be \$60.00 plus a day instead they have only charged the tenant \$25.00 per day and suggests this is the reason he has not been looking for alternative accommodation.

The landlord testifies the tenants' failure to move out as requested as jeopardized the society's legal standing with BC Housing. The society has now decided to abandon the lease of this unit due to its misuse.

The landlord testifies that he did not promise the tenant cable or telephone services after his three month contract was over and did withdraw these services from the tenant in August, 2011.

The tenant presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

I have carefully considered the evidence before me, including the sworn testimony of both parties. I have also considered the issue of jurisdiction in this matter. The landlord relies on s. 4(7) of the Act which states:

This Act does not apply to

(f) living accommodation provided for emergency shelter or transitional housing,

The landlord argues that I do not have jurisdiction in this matter and he is not governed by the *Residential Tenancy Act* with regards to providing a proper notice to end tenancy as this unit was rented to the tenant for emergency shelter and transitional housing. The tenant argues that as he was allowed to continue living in the unit after the three month term allowed for emergency housing expired; he and the landlord have entered into a verbal tenancy agreement and he pays rent to the landlord for this unit.

I have considered these arguments and find the landlord has entered into a verbal tenancy agreement with the tenant to rent this unit for the daily rent of \$25.00 from April 01, 2011. I find In collecting rent and by not either evicting the tenant or entering into a new fixed term emergency contract with the tenant on March 31, 2011 the landlord has established a month to month tenancy. Therefore it is my decision that I do have jurisdiction in this matter. Consequently, if the landlord wants to evict the tenant he must comply with either s. 46, 47, 48, 49, or 49.1 of the *Act* and give the tenant a Notice to End Tenancy that is appropriate for any one of these sections of the *Act*. **I therefore order** the landlord to comply with the *Act* with regards to serving the tenant with an appropriate Notice to End Tenancy.

The tenant has stated that he has found alternative accommodation and will be vacating the rental unit on October 15, 2011. As the tenant is also governed by the *Act* he must also ensure he provides Notice to the landlord to end his tenancy in accordance with s. 45 of the *Act*.

With regard to the tenants claim for a rent reduction due to the loss of a facility; in this matter the tenant has the burden of proof to show what his monetary loss is when he is seeking a rent reduction. The tenant has not provided sufficient evidence to show his monetary loss in this matter and therefore this section of his claim is dismissed.

Conclusion

The tenant has been partial successful with his claim with regard to an Order for the landlord to comply with the Act. The remainder of the tenants claim is dismissed without leave to reapply.

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 15, 2011.

Residential Tenancy Branch