



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR, MNDC, FF
Tenant: CNR, MNDC

Introduction

This hearing was convened by way of conference call in response to applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling a notice to end tenancy for unpaid rent or utilities and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The hearing did not conclude on the first day and was adjourned for a continuation of the testimony. Both parties attended both days of the hearing, gave affirmed testimony and were given the opportunity to cross examine each other on the evidence. The tenant also called 3 witnesses who testified and were subject to cross examination by the landlord. All evidence and testimony provided have been reviewed and are considered in this Decision.

At the commencement of the first day of the hearing, the parties agreed that the tenancy would end on November 30, 2011. The tenant had moved from the rental unit on that date, which was prior to the second day of the hearing. Therefore, an Order of Possession is not required by the landlord, and the applications by the landlord for an Order of Possession, and by the tenant for an order cancelling a notice to end tenancy, are hereby dismissed as withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled to a monetary order for unpaid rent or utilities?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy began on October 1, 2011 and was to expire on October 1, 2012. Rent in the amount of \$1,150.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00. The parties agree that no move-in condition inspection report was completed at the commencement of the tenancy. The rental unit is a basement suite in a house, and the landlord resides in the upper unit.

The landlord testified that the tenant failed to pay rent for the month of November, 2011 and owes the landlord \$1,150.00, which is not disputed by the tenant.

The landlord further testified that the police were called on November 2, 2011 and again on November 6, 2011 by the tenant. The tenant had told the police that the landlord was harassing the tenant, and that the landlord's son put a stereo on the register above the rental unit, but the landlord put a stop to it. The second time the police were called, the tenant had told the police that the landlord had threatened to kill the tenant. The police told the landlord that the tenant's complaint was about that threat at 1:00 p.m. but the tenant didn't call the police until much later in the day and the police felt the tenant was trying to justify not paying rent, and the landlord should stay away from the tenant. The landlord complied.

The tenant testified to a sequence of events involving the landlord's actions toward the tenant commencing on November 3, 2011. The events included yelling down the register into the tenant's rental unit, calling the tenant a parasite, placing stereo/radio equipment over the register tuned to be off any station which caused loud noise or static to sound into the rental unit and a text message from the landlord that said, "Enjoy." The tenant also testified that the landlord shouted down the vent, "I am coming to get you," and 4 attempts to enter the outside door of the tenant's rental unit.

On November 6, 2011 the landlord threw an ashtray and its contents at the screen door of the rental unit, and later knocked on the door demanding money. The tenant offered to exchange the post-dated cheque for the rent for cash, but the landlord refused to return the cheque. The tenant also offered to sign a Mutual Agreement to End Tenancy, and the landlord again threatened to kill the tenant. The tenant's children went to stay with their other parent who told the tenant to call police.

On November 12, 2011 the tenant found a note from the landlord taped to the screen door of the rental unit stating that the landlord had entered the rental unit to reset a breaker. A copy of the note was provided in advance of the hearing. The tenant left the landlord a note with a cell phone number and stating that the landlord had not received permission to enter the rental unit. The following day, the tenant found another note from the landlord taped to the door of the rental unit, and discovered that 2 space heaters were missing, one of which was located outside in the rain. A copy of that note was also provided in advance of the hearing, and it also states: "Get this straight! This is my house! R.T.B. or not I will abide by the rules but will protect my property from parasites like you or others. I have your friends plate #'s and will have you found if you cause more damage. I can enter my suite at any time if a breaker blows and I take a witness with me."

On November 14, 2011 the tenant left the rental unit to pick up a child from school and exited via a window, leaving the latch on the door locked. Upon returning, the tenant discovered that the door had been forced and the lock broken.

The tenant also testified that on November 18, 2011 the landlord had sent a text message to the tenant asking the tenant to turn on the outside light. The tenant responded by text message and turned on the light. The next day the tenant received another text message from the landlord asking if hitting the breakers was fun. The tenant replied that the tenant wasn't at home. Messages from the landlord continued to December 9, 2011, wherein the landlord told the tenant to go away, and one message stated that the landlord had re-rented the unit for December 3, 2011. Copies of text messages were provided by both parties prior to the hearing.

Another note was left on the tenant's door from the landlord which includes a statement, "I will be a pit bull if I have to."

The tenant's first witness testified that the tenant called the witness on November 3, 2011 because the tenant thought the landlord was behaving strangely and the witness could hear the landlord's TV through the phone. The tenant went into the bedroom during the phone call and the witness could hear static like a radio not on a channel and it was extremely loud. The witness also heard someone yelling loud. A few minutes later, the male voice yelled again, "I'm coming," then, "I'm coming to get you," and then, "Move." The witness then heard someone trying to get into the rental unit. The witness and tenant hung up the phone so the tenant could call 911, and the tenant's children were sleeping.

The witness also testified that the tenant called the witness after the police left, and the tenant sounded upset. The TV had been turned down and eventually the radio as well,

then the witness heard the male voice say, "Get out, you parasite." Again someone tried to get into the rental unit but the screen door was locked so all the landlord could do was rattle the door. During cross examination, the witness was asked how the witness knows that the radio the witness heard belonged to the landlord and not the tenant. The witness responded that the witness has known the tenant for many years and it would be out of character for the tenant to do so while the children were sleeping, and the tenant called the police.

The second witness for the tenant testified that the tenant called the witness on November 3, 2011 in a panic about noises at the door and the tenant thought someone was trying to get into the rental unit. The witness heard the screen door open and someone trying to get in through the inside door. The witness suggested the tenant call the police.

The witness also testified to being present on November 12, 2011 when the tenant found a note on the door of the rental unit. The witness was with the tenant all day and the landlord did not call the tenant for permission to enter the rental unit. A space heater was missing from the rental unit, and it was there the day before. The witness also testified that another note from the landlord was found on November 13, 2011 which stated that the landlord would enter the rental unit whenever the landlord wanted to. The tenant had left the landlord a note the day previous stating that the landlord could not enter the rental unit.

On December 9, 2011 the witness observed a text message sent to the tenant by the landlord stating that the landlord was going to come by and get money that the RTB ruled the tenant owed the landlord. The witness described the tenant as being frazzled, uneasy, stressed and afraid. The witness was also with the tenant during move-out.

The third witness for the tenant testified that on November 6, 2011 the tenant's oldest child was concerned for the tenant; worried that the tenant wouldn't be okay and the child wanted to stay at the witness' house. The child expressed that the landlord wanted to kill the tenant, and the child stayed with the witness alot after that to reduce anxiety in the child, and wanted to call to ensure that the tenant was okay. The child was afraid, and the children did not want to stay in the rental unit after that.

Analysis

In the circumstances, I find that both parties have breached the *Residential Tenancy Act*. The tenant has failed to pay rent when it was due, and the landlord has failed to allow the tenant the right to quiet enjoyment. However, even if the tenant does not pay rent when it is due, that does not give the landlord the right to enter a rental unit without

giving the tenant at least 24 hours written notice and not more than 30 days before the entry. The specific sections of the *Act* that apply are as follows:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the

entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

It is clear in the evidence that the landlord needed the rent money in order to satisfy the landlord's financial obligations. It is also clear that the landlord has caused undue stress, anxiety and fear in the tenant and the tenant's children. During the course of testimony, the tenant testified that the landlord threw an ashtray and its contents at the door of the rental unit, which is denied by the landlord. The parties have both provided me with evidence that the landlord acted in an erratic and disturbing manner from November 3, 2011 until beyond the date that the tenancy ended, and therefore, I accept the testimony of the tenant.

The tenant has applied for a monetary order equivalent to one month's rent as compensation for the abuse the tenant's family suffered since November 3, 2011.

The landlord has applied for rent owed for the month of November, 2011 and loss of revenue for the following month. In the circumstances, I find that the tenant owes the landlord one month's rent and the tenant is entitled to the equivalent of one month's rent for loss of quiet enjoyment. I further find that as a result of the landlord's unreasonable actions, and the fact that the parties agreed to an end to the tenancy effective November 30, 2011, the landlord is not entitled to any monetary order for loss of revenue.

I further find that both parties are required to bear their own costs in relation to the applications before me.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end tenancy issued by the landlord is hereby dismissed without leave to reapply.

The landlord is owed \$1,150.00 for one month of rent, and the tenant is entitled to a monetary order in the amount of \$1,150.00 for loss of quiet enjoyment. The amounts are set off from one another, and neither party shall recover the filing fee from the other.

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: January 4, 2012.

Residential Tenancy Branch