



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, RR, FF

Introduction

This is an application by the tenant to cancel a notice to end tenancy for unpaid rent, for money owed or compensation due to damage or loss, to order the landlord to comply with the *Act*, for the landlord to provide services, for the landlord to complete repairs and recovery of the filing fee.

Background and Evidence

The landlord at the start of this hearing stated that he did not agree with the tenant being allowed to use the person named as her agent as this person would be 'acting with malice' as they owe the landlord unpaid rent from a previous tenancy. It was clarified for both parties that matters related to a different tenancy have no bearing on this hearing and this tenancy.

On January 3, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant's agent stated that the December 2011 rent had been paid in accordance with the corrected November 2011 decision but that the landlord did not agree with what the monthly rent was to be when the tenant was using the gas fireplace. The tenant's agent stated that the landlord served the tenant the 10 day notice which was followed by a note on January 3, 2011 stating that if the \$30.00 parking fee was not been paid by the 6th day, the tenant was at risk of having her car towed. The tenant is seeking 1 month's parking and ½ month rent as compensation due to the landlord's actions.

The tenant's agent stated that because of the on-going dispute as to what the rent should be and the landlord refusing to take the tenant's January 2012 rent, the tenant paid for an affidavit to show that she had attempted to pay the rent and that it was refused. The landlord stated that he had sent the tenant a letter outlining what he believed the rent to be and that it was after receipt of this letter that the tenant did not want to pay the rent.

The tenant's agent stated that the landlord had considered the \$50.00 'gas fee' as not paid and on December 31, 2011 the landlord shut off the gas to the fireplace without

warning and has refused to turn it back on. The tenant's agent stated that with the gas fireplace not operating the hydro bill was much higher and the tenant is seeking a partial compensation for the high hydro bill from December 31, 2011 through January 25, 2012. The tenant is seeking compensation for 1 month's use of the fireplace due to the landlord's actions.

The tenant's agent stated that the tenant was willing to pay the landlord \$25.00 for ½ of January 2012 to have the gas turned back on. The landlord stated that he was of the understanding that the tenant had 'tampered' with the gas fireplace and insisted that this office take liability if anything happened due to the fireplace being tampered with. The tenant's agent stated that all the tenant had done was place a board in front of the fireplace to help stop the draft.

The landlord testified that as the amount of the monthly rent was in dispute he was firm in his belief that the tenant's rent when using the gas fireplace was to be \$685.00 plus the \$50.00 gas fee.

The tenant's agent stated that although the landlord was ordered to provide a copy of the signed tenancy agreement in a previous hearing, the landlord sent a copy of an Application for Rent of Suite form only. The landlord responded by stating that in 2004 when this tenancy began all they filled out for tenancies was the application for rent of suite and that they did not use tenancy agreement forms at that time. The landlord stated that if he had a tenancy agreement for this tenancy he would have provided a copy to the tenant.

The tenant's agent stated that the landlord's actions show the continued pattern of harassment by the landlord. Shutting off the gas fireplace and refusing to turn it back on, threatening to tow the tenant's car and refusing to take the tenants rent even with a decision from the Residential Tenancy Branch all prove the landlord's continued disturbance of the tenant's peace and quiet enjoyment. The tenant's agent also commented that the actions of the landlord have had a significant impact on the tenant's health. The tenant is seeking \$500.00 compensation for harassment and disturbance of their peace and quiet enjoyment.

The landlord concluded the hearing by again stating that the tenant's agent was acting with malice as they owed the landlord unpaid rent from a prior tenancy. The landlord stated that the history of the tenant and her agent in relation to applications made through this office should be looked at as they use continually this office to extort money from the landlord. The landlord also challenged the tenant's claim that her health was being impacted or that she even suffered from any significant health conditions as she claims.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they are entitled to an order of possession for unpaid rent. The amount of monthly rent the tenant is to pay when the gas fireplace is or is not in use has continued to be in dispute and the tenant attempted to pay the January 2012 rent based on the Dispute Resolution Officer's corrected decision.

For the landlord to simply issue a notice for unpaid rent because there is disagreement on the amount the rent is to be was not the proper course of action for the landlord to follow. Application through this office is the proper course of action to settle landlord and tenant disputes and the matter regarding the rent was already scheduled for a review hearing. Therefore the landlord's January 3, 2012 notice to end tenancy for unpaid rent is set aside and the tenancy continues uninterrupted.

In regards to what rent remains unpaid or over paid, that matter was dealt with under file 781897 and it was determined in that hearing that:

- When the tenant **does not** have the *gas fireplace operating fully*, the rent is **\$640.00 (exclusive of parking fees)**.
- When the tenant **does have** the *gas fireplace operating fully*, the rent is **\$685.00 (exclusive of parking fees)**.

In regards to the landlord not complying with the *Act* and providing the tenant a copy of the signed tenancy agreement as required, the parties in this hearing agreed that if the landlord was now ordered to complete a tenancy agreement, that the parties, due to their past history would not be agreeable to the terms of the tenancy agreement. The tenant stated that she no longer cared if she had a copy of the tenancy agreement. Therefore the landlord will not be ordered to comply with the *Act* in this regard and this portion of the tenant's application is dismissed without leave to reapply.

In regards to the landlord not providing services, specifically the gas for the fireplace, the landlord was **Ordered in this hearing to have the gas to the fireplace in the tenants rental unit back on by 6:00 PM this day, January 25, 2012**. The tenant in this hearing agreed to pay the landlord \$25.00 for ½ of January for the gas. Both parties understood that once the issue of the rent was resolved, any over or under paid rent would be addressed in this decision. The tenant was entitled to recovery of the \$25.00 gas fee and this overpayment had been addressed under file 781897.

In regards to the tenant's request for reimbursement of the fee for the affidavit, it is understood why the tenant obtain an affidavit however this document has no bearing or effect on the outcome of the unpaid rent and was not required to prove the tenant's case. Therefore the tenant is not entitled to compensation for this portion of their application and it is dismissed without leave to reapply.

In regards to the tenant's claim for compensation I find that the tenant has suffered some level of stress and inconvenience because of the landlord's actions. The issuance of the 10 day notice, the letter threatening to tow the tenant's car, shutting off the gas and refusing to turn it back on and refusing the tenant's rent to a reasonable person may seem as threatening or intimidating. And while I realize a landlord must have freedom to perform the duties of their job as a landlord, and that these parties have a significant history, the landlord knew the matter of the rent, which is the source of all these problems, was being addressed in a hearing this day.

Therefore I award the tenant compensation in the following limited amounts:

- Hydro based on a pro rated amount of \$2.54 per day for 27 days - \$35.00.
- Affidavit - \$0.00
- ½ month rent reduction – \$0.00
- 1 month parking - \$0.00
- December rent overpayment addressed under file 781897
- 1 month fireplace usage - \$0.00
- Disturbance of tenant's peace and quiet enjoyment - \$25.00

Accordingly I find that the tenant is entitled to a monetary order for \$60.00.

Conclusion

The tenant may deduct \$60.00 from future rent owed to the landlord for recovery of the monetary award.

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 25, 2011.

Residential Tenancy Branch