



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to reduce rent; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing I instructed the parties that despite the landlord's evidence of events that may be a potential cause to end the tenancy that occurred after the 1 Month Notice was issued on February 7, 2012, I would not consider any of these events as relevant to this decision.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to Sections 27, 32, 47, 67, and 72 of the *Act*.

Background and Evidence

The parties each submitted a copy of the current tenancy agreement signed by the parties on May 3, 2009 for a 5 month fixed term tenancy beginning on May 1, 2009 that converted to a month to month tenancy on October 1, 2010 for the monthly rent of \$500.00 including utilities, due on the 1st of each month, with a security deposit of \$250.00 paid.

Both parties also provided copies of a 1 Month Notice to End Tenancy for Cause issued on February 7, 2012 with an effective vacancy date of March 10, 2012 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk.

In her written submissions the landlord asserted 12 reasons for eviction and provided testimony on some of the issues related to the 12 reasons except where I had

prohibited her from doing so on issues related to events after the Notice was issued. I will address all 12 issues in a table in the analysis below.

The landlord testified that the tenant has been harassing the landlord with issues that are not related to her role as landlord and by abusing the Dispute Resolution Services processes through the Residential Tenancy Branch.

The landlord testified that as a result of the tenant's numerous Applications for Dispute Resolution and their subsequent hearings the landlord has missed several holiday events due to preparing for hearings; that she no longer can count on her neighbours to keep an eye on things when she wants to leave the residence for extended periods like family vacations.

The landlord testified that the incident the lead to her issuance of the notice stems from the tenant's disregard for the warning letter the landlord provided to the tenant on December 19, 2011 in which she states: "You have been repeatedly warned and for the last time, I ask you to cease any further contact for reasons that are not in the realm of my responsibility. Let this be perfectly clear, failure to comply, for the duration of your tenancy, will result in an eviction notice, specific to Section 47(1) of the Residential Tenancy Act [SBC 2002] Chapter 78, presented to you within seven days."

The event occurred on January 30, 2012 were the landlord testified that the tenant had identified a problem with the windows; the landlord inspected them and determined that she would not be doing anything about the complaint; and that the tenant wouldn't take no as an answer. The landlord contends that once she provided the tenant with her response that the matter was no longer in the realm of her responsibility.

In relation to the heat issue in the rental unit the parties agree that since the start of the tenancy the landlord has provided primary heat through the force air oil furnace with supplementary heat provided to the tenant in the form of a space heater. The original space heater was returned to the landlord in late 2011 and a replacement was provided to the tenant.

The tenant testified that the replacement was damaged when she used an extension cord that was not suitably rated for use with the heater. The tenant seeks compensation in the amount of \$50.00 for February and a further rental reduction of \$50.00 per month for the duration of the tenancy.

The landlord testified that she keeps the thermostat set at 15 degrees Celsius and that the setting is never changed and she had provided the tenant with the supplementary heater. In addition the landlord testified there is a fireplace available to the tenant that she chooses not to use.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - iii. Put the landlord's property at significant risk.

Reason	Analysis
Risk of Fire – extension cord – February 8, 2012	Event occurred after the notice to end tenancy was issued, and therefore not a cause contemplated for issuance of the Notice.
Security of the Property	No evidence or testimony provided on any specific events or when this occurred, what the landlord did to reinforce the security requirements, or if the tenant is now in compliance.
RCMP involvement – March 18, 2011	The landlord provided no evidence or testimony as to why this event that occurred almost a year ago has any relevance to ending the tenancy a year later.
Breach of Material Term – February 16, 2012	Event occurred after the notice to end tenancy was issued, and therefore not a cause contemplated for issuance of the Notice. In addition, breach of a material term was not identified as a reason to end this tenancy on the Notice.
Prayers altercation – January 8, 2012	Both parties have different interpretations of the events and their individual understanding of what was going on. No evidence to substantiate events.
Power outage – June 23, 2011	The landlord provided no evidence or testimony as to why this event that occurred 9 months ago has any relevance to ending the tenancy at this time. The landlord provided no evidence the tenant caused the outage.
Refusal to change a hearing date – October 7, 2011	Landlord asserts this shows the tenant was more concerned about the hearing than the safety of the students the landlord teaches on the property. The landlord provided no evidence of how this has any relationship to the landlord/tenancy relationship. A party to a hearing is not required under the <i>Act</i> to any re-scheduling request from the other part.
Dryer lint hazard	The landlord provided no evidence that this is still occurring or how it is relevant to ending the tenancy at this time.
Arbitration for sleep deprivation	The landlord provided no reasons as to why this would constitute a reason to end the tenancy.
Abuse of Dispute	Dispute Resolution Services are available to all tenants and

Resolution Services and inconvenience to the landlord's schedule as a result	landlords who have disputes related to their tenancy. The landlord has provided no evidence as to why the tenant's use of these services is excessive or how the tenant was responsible for the coincidence of scheduling set by the Residential Tenancy Branch.
Window Condensation – August to October 2011	The landlord provided no evidence that this problem continues or why this event has any relevance to ending the tenancy at this time.
Replacement windows – January 2012	The landlord indicates the tenant wants replacement windows and the landlord is fearful the tenant will take matters into her own hands and devalue her property, I find, however, the landlord has provided no evidence to establish any risk to the property.

For the above noted reasons I find the landlord has failed to establish sufficient cause to end the tenancy.

As to the tenant's claim for compensation for heating issues, to be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the evidence before me, I accept that since the start of the tenancy the landlord has set the temperature of the primary heat source at 15 degrees Celsius; that the landlord has provided the tenant with a supplementary heater; and that the original heater was replaced, by the landlord, in the fall of 2011. I also accept, from the tenant's testimony that the tenant caused the supplementary heater to be damaged.

Since the arrangement the parties have set up has worked for the duration of the tenancy and the tenant accepts responsibility for the damage to the supplementary heater, I find that the tenant has failed to establish the landlord has suffered any loss from a violation of the *Act*, regulation or tenancy agreement on the part of the landlord and as such, the tenant is not entitled to any compensation.

While it is not clear from the testimony and evidence from the parties if the landlord has had the supplementary heater repaired and returned to the tenant, in the event that it has not been returned to the tenant for use I make the following order.

I order the landlord to immediately either ensure the tenant has a supplementary heater (space heater) or the landlord set the building thermostat at a temperature of between

20 and 25 degrees Celsius during day and evening hours. I find no reason to grant the tenant a rent reduction at this time, however, should the landlord fail to comply with my order above regarding heating the tenant is at liberty to file an Application for Dispute Resolution to seek compensation.

Conclusion

For the reasons noted above, I cancel the 1 Month Notice to End Tenancy for Cause dated February 7, 2012 and find the tenancy remains in full force and effect.

In addition, I dismiss the remainder of the tenant's Application for compensation and for a rent reduction.

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: February 29, 2012.

Residential Tenancy Branch