



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNR, MNDC, OLC, LRE, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; to dispute an additional rent increase; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the unit; and to a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; the landlord's agent and a witness requested by both parties.

At the outset of the hearing the landlord's agent indicated that the landlord had issued the tenant two 10 Day Notices to End Tenancy for Unpaid Rent, one on March 2, 2012 and one on March 9, 2012. As the tenant submitted her Application for Dispute Resolution on March 6, 2012 I find that these two notices are linked and I amend the tenant's Application to include both notices.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel two 10 Day Notices to End Tenancy for Unpaid Rent; to cancel an additional rent increase; an order to have the landlord comply with the *Act*, regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the unit; to a monetary order for damage or loss and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The tenant testified that the tenancy began in December 2011 for monthly rent in the amount of \$500.00 per month for the months of December 2011 and January 2012; that she later signed a written tenancy agreement for rent in the amount of \$775.00 for a fixed term from February to June 2012; and that on February 14, 2012 the landlord made her sign a new tenancy agreement for rent in the amount of \$850.00.

The landlord has submitted into evidence a statement agreeing that he had rented the unit to the tenant for the month of December 2011 for \$500.00. However the landlord's submission indicates the parties entered into a fixed term tenancy agreement beginning on January 1, 2012 and ending June 30, 2012 for monthly rent of \$775.00 and that on

February 1, 2012 the parties signed a new tenancy agreement for rent in the amount of \$850.00 for a fixed term of beginning on February 1, 2012 and ending on August 1, 2012. The landlord provided copies of both of these tenancy agreements.

The parties agree that on March 2, 2012 the landlord issued the tenant a document entitled "Termination Notice to Tenant" indicating the tenant had failed to pay rent in the amount of \$500.00 due on March 1, 2012 and that the tenant must vacate the unit in 10 days. The tenant submitted a copy of this Notice into evidence.

The tenant's agent testified that the landlord was later instructed that he had used the wrong form and so on March 9, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent citing that \$500.00 of rent was unpaid when it was due on March 1, 2012 with an effective vacancy dated of March 19, 2011. Neither party provided a copy of this Notice.

The landlord submitted an accounting of monies received from the tenant and the Ministry of Social Development (MSD) for the tenant's rent. In his submission the landlord indicated that he had received a cheque from MSD for \$500.00 but he had not negotiated the cheque received for March 2012.

The landlord's agent testified that the landlord had not received the cheque by March 1, 2011, when it was due, but that he did receive on March 6, 2011 and as such rent was paid within 5 days of the landlord's first Notice that he issued and 3 days before the second Notice was issued.

The tenant sought the following compensation:

Description	Amount
Overpayment of Rent/Illegal Rent Increases for February and March 2012	\$350.00
Unauthorized Rent Increase for February and March 2012	\$150.00
Hydro Shut off – (30 per day x 2)	\$60.00
Undue stress - \$100.00 per week since the landlord returned to Canada	\$500.00
Additional Hydro shutoff (March 6)	\$60.00
Internet access shut off (\$20.00 per day x 7)	\$140.00
Deliberately interfering with internet from March 9 until March 31, 2012	\$440.00
Deliberately interrupting power from March 9 until tenant can move out	\$660.00
Moving Expenses due to landlord's illegal activities	\$500.00
Hydro hook ups at new residence	\$150.00
Loss of food items due to deliberate power shut off	\$300.00
Extra cell phone usage related to this dispute	\$50.00
Undue stress	\$1,000.00
Total	\$4,360.00

The tenant testified that she had an arrangement with a tenant in another unit for the use of his internet for \$20.00 per month and that the landlord was staying with this

tenant and continually disconnected the internet so the tenant could not use the service. The witness confirmed the landlord would disconnect the internet when he was not at home during this time.

The tenant testified the landlord also shut off the power on 4 occasions: February 15, 2012 for ½ to 1 hour; on March 2, 2012 for 2 hours; and on March 6 and 7 for 1 to 2 hours each. The landlord's agent testified the landlord had turned off the power on March 2, 2012 because he believed the tenant had moved out of the rental unit because she had given him verbal notice that she intended to vacate the rental unit by March 1, 2012 but that he turned it on when he was aware she had not yet vacated the unit.

The tenant testified that she had witnessed the landlord exhibit violent behaviour towards others in the residential property and that he had on occasion entered her unit without her permission, whether she was home or not.

Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant a notice effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 46(4) states if the tenant pays the rent within 5 days of receiving the notice the notice will have no effect.

As the landlord received a cheque for the rent owed on March 6, 2012, I find the tenant has paid the full rent as outlined in the Notices issued on both March 2, 2012 and March 9, 2012 and I therefore find these notices to be ineffective.

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.

As to the tenant's claim that the landlord has implemented an additional increase, I find that since the tenant had signed a new tenancy agreement, agreeing to rent in the amount of \$850.00 the landlord has not implemented a rent increase as outlined in Sections 40 to 43 of the *Act*, but rather that a new tenancy agreement was entered into by the parties by mutual consent.

As such, I dismiss the portions of the tenant's Application seeking to dispute an additional rent increase and the portions of the tenant's monetary claim seeking compensation for overpayment of rent and unauthorized rent increases.

In relation to the tenant's claim for compensation for purposely shutting off access to internet for 7 days and from March 9 until the tenant vacates I find that provision of internet services was not a part of the tenancy agreement and was provided by another party.

As such, I find the tenant suffered no loss as a result of the tenancy and therefore the tenant is not entitled to any compensation from the landlord for the loss of internet services, either prior to this hearing or until the end of the tenancy.

As to the tenant's claim for power disruptions to the rental unit, I accept the parties agree that on March 2, 2012 the landlord did turn off the power to the rental unit for a period of no more than 2 hours. However, I find the tenant has failed to provide sufficient evidence to establish any other power outages or that if they occurred they were initiated specifically by the landlord.

In addition, the tenant is claiming for future loss of hydro, as these events have not occurred, I find the tenant has not suffered any loss or damage resulting from a future event. I dismiss this portion of the tenant's Application.

In regard to the tenant's claim for moving expenses and hydro hook ups for a new location, as these are future events and have not occurred, I find the tenant has suffered no loss and I dismiss this portion of the tenant's Application.

The tenant has requested compensation in the amount of \$300.00 for lost food resulting from the power outages. As the tenant has provide insufficient evidence to established that the landlord caused a power outage for anything longer than 2 hours and she has provided no evidence or testimony about what food was lost or when I find she has failed to establish she has suffered a loss or that if there was a loss it was a result of the landlord's actions. I dismiss this portion of the tenant's Application.

As to the tenant's claim for compensation for additional cell phone usage "directly related to this application", the tenant has provided absolutely no evidence to substantiate this claim. I dismiss this portion of the tenant's Application.

In regard to the tenant's claim for compensation for stress, I note that there is no ability under the *Act* to provide compensation for stress. Further, in the case before me, I find that with the exception of the power outage of March 2, 2012 and the issuance of the 2nd notice (after the landlord had received rent in full), I find the tenant has failed to provide sufficient evidence that the landlord has violated the *Act*, regulation or tenancy agreement sufficiently to cause undue stress.

As such, I dismiss the portion of the tenant's Application seeking compensation for undue stress. In addition, I dismiss the portion of the tenant's Application seeking to have the landlord comply with the *Act*, regulation or tenancy agreement or to suspend or set conditions on the landlord's right to enter the rental unit.

Conclusion

As per the above, I find the tenancy remains in full force and effect and the tenant is entitled to cancel both Notices to End tenancy issued by the landlord on March 2, 2012 and March 9, 2012.

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: March 22, 2012.

Residential Tenancy Branch