



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing dealt with the tenants' application to cancel a 1 Month Notice to End Tenancy for Cause; request for Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, request for Orders for compliance against the landlord. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord was represented by an agent at the commencement of the hearing. The attendance of the landlord was requested and she appeared approximately half way through the hearing. The landlord was asked to respond to certain submissions made by the tenants' agent, which she did.

The landlord's agent orally requested an Order of Possession during the hearing.

Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Have the tenants established an entitlement to compensation for loss of use of the rental unit?
3. Is it necessary to issue Orders for compliance against the landlord?

Background and Evidence

The parties entered into a written tenancy agreement that commenced on November 1, 2010. The written tenancy agreement provides that the tenants are to pay rent of \$975.00 on the 1st day of every month. The tenants were served with a 1 Month Notice to End Tenancy for Cause dated February 29, 2012 (the Notice) which is the subject of this dispute. The reason for ending the tenancy, as indicated on the Notice, is that the

tenants are repeatedly late paying rent. The Notice has a stated effective date of March 31, 2012.

The landlord's agent submitted that the Notice was placed in the tenants' mailbox on February 27, 2012. The tenants' agent submitted that the Notice was found in the mailbox on March 1, 2012.

The landlord's agent testified that the tenants started paying rent late in January 2011 and from July 2011 onwards there has been only one month where rent was paid on time. The landlord provided copies of receipts and a ledger showing the amounts and dates payments were received starting from the month of July 2011 onwards.

The tenants' agent acknowledged that several months of rent were paid late but submitted that the landlord was agreeable to accepting rent on a payment plan. The agent had personally spoken with the landlord in June 2011 and the landlord indicated she wanted to work with the tenants in recognition that they were good tenants. On September 2, 2011 the landlord's agent signed a document acknowledging partial payments of \$300.00 each in July 2011; August 17, 2011 and August 2011 with further indication that the next payment of \$675.00 would be payable September 14, 2011.

The landlord submitted that the tenants did not meet the agreement to pay \$675.00 on September 14, 2011. Further, the landlord had to issue a 10 Day Notice to End Tenancy for Unpaid Rent in November 2011 because the tenants did not pay November's rent. The landlord was of the position that there was not an agreement in place to tolerate or accept repeatedly late payments of rent. Rather, the landlord would receive the rent monies after attending the property numerous times in a month and the tenants were informed that the late and partial payments had to stop.

I heard that the November rent was eventually paid and the landlord did not enforce the 10 Day Notice. In late January or early February 2012 I heard the tenant and the landlord discussed partial payments for February 2012 rent which the landlord agreed to provided the rent for March would be made on time.

It was undisputed that the rent for March was paid on March 6, 2012. The tenants' agent submitted that the rent was not paid on time because the tenants were initially informed by the landlord that they did not have to pay rent for March 2012 because they had to leave the rental unit due to the water leak remediation. The landlord denied making such a statement. Rather, the landlord explained that the tenants were offered their security deposit and March's rent if they would agree to end the tenancy.

It was undisputed that the tenants were asked to leave the property starting February 27, 2012 so that remediation work could take place to resolve a water leak. The tenants submitted that they returned to the rental unit March 6, 2012. The landlord was of the position the tenants returned on March 5, 2012.

Due to the water leak and inability to reside in the rental unit the tenants are seeking compensation for the following amounts:

3 nights hotel stay March 3 – 5, 2012	\$ 403.84
Pro-rated rent for 9 days	283.06
Pro-rated utilities for 9 days	<u>44.19</u>
Total claim	\$ 731.09

The tenants' agent explained that the pro-rated utilities were calculated using the last bill the tenants paid. The utility bill submitted as evidence indicates the utilities paid by the tenants was for the period up to January 31, 2012.

The landlord was not agreeable to compensating the tenants for loss of use for the following reasons: the tenants were required to carry tenant's insurance; the tenants caused the water leak by installing a bidet in the bathroom; and, someone called the City which has put a stop work order on the property.

The landlord had submitted an email written by the restoration specialist. The letter indicates that emergency drying equipment was in place in the rental unit on February 27, 2012 and on March 3, 2012 a secondary water loss of reported which necessitated additional drying machines. The tenants' agent advised the specialist that she had returned to the property March 6, 2011. I was not provided evidence written by the restoration specialist or the landlord's insurance company that would indicate the source of the water leak. However, during the hearing, I heard the landlord state that the ceiling in the rental unit was removed and remains uninstalled due to a "stop work" order issued by the City. The documentary evidence includes two documents from the City: dated March 5 and March 7, 2012 indicating the landlord is required to have inspections and permits.

Analysis

Upon consideration of all of the evidence presented to me, I provide the following reasons and findings with respect to the application before me.

Notice to End Tenancy

Where a landlord wishes to end a tenancy for repeated late payment of rent, Residential Tenancy Policy Guideline 38: *Repeated Late Payment of Rent* provides that there should be a minimum of 3 late payments to justify ending the tenancy for repeated late payment of rent.

In executing the written tenancy agreement the parties agreed that rent of \$975.00 would be payable to the landlord on the 1st day of every month. It is undisputed that there have been several months where the rent has been paid after the 1st of the month and I am satisfied there have been well in excess of three late payments.

The tenants have suggested that the landlord was agreeable to accepting rent after the 1st the month and point to a document signed by the landlord's agent on September 2, 2011. I do not accept that this document is evidence of the landlord's agreement to accept rent on a repeatedly late basis. Rather, upon review of the ledger and the September 2, 2011 document I find the tenants were in substantial arrears as of September 2, 2011 and the landlord's agent was documenting the landlord's understanding and agreement as to when the next payment would be made to catch up on the arrears. Nowhere on the September 2, 2011 document does it indicate that future month's rent will be accepted late.

I heard undisputed testimony that the landlord issued a 10 Day Notice in mid-November 2011 for November's rent. I find that issuance of a 10 Day Notice communicates to the tenant that rent is outstanding and payable to the landlord. Such communication is inconsistent with an agreement to pay late and in instalments.

Finally, I heard undisputed testimony that it was agreed that March 2012 rent was to be paid on time followed by disputed verbal testimony that the landlord had agreed to waive March's rent due to the water leak.

Since the tenancy agreement provides clear evidence as to what was agreed upon, I find the tenants have the burden to establish that they had a right to pay rent late or in partial amounts due to an agreement or understanding reached with the landlord. Based upon the above considerations, I find I am left with insufficient evidence that there was such an agreement with the landlord. Therefore, I find, based upon the terms provided in the written tenancy agreement, the tenants have been repeatedly late paying rent. Therefore, I uphold the Notice and order that this tenancy shall end.

Since the Notice was left in the mailbox, I find that it was received by the tenants on March 1, 2012. Therefore, the effective date is automatically changed to read April 30, 2012.

Pursuant to section 55 of the Act, the landlord's oral request for an Order of Possession is granted and I provide the landlord with an Order of Possession effective at 1:00 p.m. on April 30, 2012.

Monetary Claim

Where an unexpected event such as a fire or flood occurs a landlord is not held responsible for damage to the tenant's property or providing alternative accommodation unless it can be shown the landlord was negligent. In this case, I have not been presented evidence that the cause of the water leak was a result of the landlord's negligence. Nor have I been presented evidence that the landlord did not address the concerns brought to the landlord's attention in a timely manner.

Since I have made no finding that the landlord has been negligent with respect to the water leak, I find the tenants are not entitled to recover hotel costs from the landlord. Rather, the tenants are at liberty to seek recovery of such costs under their tenants' insurance policy.

I find insufficient evidence to conclude the cause or source of the water leak. I note the rental unit is identified as being the lower unit, yet I heard the tenants' ceiling has been removed to repair the leak and water damage. Nor have I been provided evidence to corroborate the landlord's statement that the tenants' actions caused the water leak. Therefore, I make no finding that the tenants are at fault for causing the water leak and I proceed to consider the tenants' claims for loss of use of the rental unit.

Upon review of the hotel bill which indicates the departure date was March 6, 2012 and the email written by the restoration specialist, I accept that the tenants resumed use of the rental unit on March 6, 2012. Since the rental unit was used by the tenants for the partial days of February 27, 2012 and March 6, 2012 I find the tenants had a loss of use of 8 whole days.

Residential tenancy Policy Guideline 16: *Claims in Damages* provides that a landlord shall compensate a tenant where there has been loss of use of a rental unit, even if there was no negligence on part of the landlord, and there was no fault of the tenant.

In light of the above, I order the landlord to compensate the tenants for loss of use of the rental unit for 8 days. I calculate this to be \$251.61 [$\$975 \times 8/31$ days] which the tenants may deduct from rent or utilities otherwise payable to the landlord.

Upon review of the tenancy agreement and addendum, utilities are paid to the landlord. As the tenants' agent acknowledged that utilities have not been paid to the landlord for the period of February 27, 2012 through March 6, 2012 I make no award for recovery of such payment. Rather, I order the landlord deduct 8 days of utility consumption from the next utility bills presented to the tenants for payment.

Order for compliance

I find it unnecessary to issue any other orders upon the landlord.

I make no award for recovery of the filing fee.

Conclusion

The Notice to End Tenancy has been upheld and the tenancy shall end April 30, 2012. The landlord has been provided an Order of Possession effective at 1:00 p.m. on April 30, 2012.

The tenants are awarded \$251.61 for loss of use of the rental unit for 8 days. The tenants may deduct this amount from rent or utilities otherwise payable to the landlord.

Further, the landlord must deduct 8 days of utility consumption from the next utility bills presented to the tenants for payment.

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 28, 2012.

Residential Tenancy Branch