



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of a one bedroom suite in a 10 unit complex designed for the disabled or the elderly. Pursuant to a written agreement, the month to month tenancy started in January or February 2011. The rent is \$550.00 per month and the tenant paid a security deposit of \$275.00.

The landlord testified that the primary reasons for issuing a 1 Month Notice to End Tenancy were noise, safety, and disturbance. The landlord stated that the noise has been an ongoing problem for 6 to 8 months; that the tenant has a set of drums and a

stereo playing very loud. In her documentary evidence, the landlord provided three complaint letters. The landlord said that she has made several attempts to resolve the problem but that the tenant does not cooperate. The landlord said that styrofoam insulation the tenant placed against the wall does nothing to reduce the noise level.

The landlord stated that the tenant parks a gas powered dirt motorcycle inside the unit, which creates a potential fire hazard. She stated that the tenant was reported riding an ATV on the lawn alongside the other units, which intimidated the occupants and also created a hazard for children. The landlord stated that the tenant insulted an elderly aboriginal neighbour by making threats of suing her and making negative references to her native status. The details of this encounter are provided in that tenant's letter provided in the landlord's evidence.

The landlord also stated that approximately 2-3 weeks ago the tenant was involved in a fight on his front lawn; the landlord was put to notice to bring evidence that led to the issuing of the notice to end tenancy, and that new evidence after the date of the notice would not be considered in these proceedings.

The landlord responded to the tenant's claim against the sanitary standards of the unit by provided a copy of the condition inspection report, showing that the tenant agreed that the unit was clean and fit for occupancy. The landlord stated that the tenant did not bring any concerns prior to being served with the notice to end tenancy, and referred to the tenant's documentary evidence of a telephone transcript with the landlord, wherein the tenant states: "*You've never had one complaint to me, or to or from me, to you...*"

The landlord also stated that the tenant does not like cats and is suspected of having harmed a neighbour's cat. She said that the tenant installed cameras to monitor other tenants in the complex.

The landlord said that other occupants in the complex are terrified to the point of physical violence, particularly the aboriginal tenant.

The landlord stated that the tenant was issued a 1 Month Notice to End Tenancy on April 1, 2012, with an effective date of April 30, 2012.

The tenant testified that he had no time to prepare for new allegations concerning the incident with the lawn incident and hurting a cat. As stated earlier the tenant was informed that I will consider incidents that occurred before the notice to end tenancy was issued.

The tenant stated that he does not play the drums; he said that the noise comes from a piano hooked to his computer system, and that he placed styrofoam insulation to dampen the noise. He said that the road construction outside is noisier than any inside noise; that he received no written notice from the landlord; that there are other noisy tenants in the complex; and that he goes to sleep by 8-9 PM every night. The tenant observed that some of the complaints are raised by family members who are friends of the landlord.

The tenant said that he installed a camera to protect his ATV. The tenant also raised issues with parking entitlements and a trailer; however these matters were not addressed by the landlord and the tenant was advised that they would not be considered in this decision. Concerning the motorcycle inside the unit, the tenant said that there is no gas in the tank.

Concerning his health condition; the tenant said that he did not complain to the landlord because he had no proof, and that he tried to correct the problem. He said that he is on welfare and disability, and filed this claim now because of the landlord's false allegations. He stated that the landlord is a millionaire, and that the complex is unsanitary and unclean. At the hearing the tenant claimed three months' rent as compensation for the landlord's violation of the Act; this claim is not part of the original application and therefore will not be considered under this application.

The tenant submitted a monetary claim as follows:

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| - Moving expenses: | \$ 200.00 |
| - Fuel costs: | \$ 100.00 |
| - Compensation for injuries: | \$10000.00 |
| - Sub-total: | \$10300.00 |

In his documentary evidence, the tenant provided information concerning Fibromyalgia, headaches and various other aches; photographs of the rental unit; and an audio CD that, for an unknown reason, could not be played on the Residential Tenancy Branch computer. The tenant also provided photographs to show the landlord's unit in the backyard, in support of the messy condition of the complex.

Analysis

With regards to the tenant's claim of \$10,000.00 for injuries caused by the landlord's deceitful actions; the tenant has failed to show how he mitigated his loss by avoiding a stressful situation, and how his injuries, for which he provided documentary evidence dated back to 1994, were caused by the landlord's actions. I find that the tenant did not prove how the landlord acted wilfully or recklessly in such manner as to be responsible for injuries that would warrant compensation of this amount, particularly when the tenant provides evidence of a pre-existing condition. The tenant stated that he had no proof, and that the motive for this claim was as retaliation against the notice to end tenancy. Accordingly I dismiss this aspect of the tenant's claim.

There are no provisions under the *Residential Tenancy Act* to recover costs for gas or moving expenses, particularly when they have not yet occurred. Section 67 of the Act allows me to award compensation for damage or loss that result from a party's failure to comply with the Act, regulations or tenancy agreement. Gas or moving costs do not constitute damage or loss under the Act and I dismiss this portion of the tenant's claim.

Although the tenant objects to the noise coming from the drums, it is not disputed that noise was made aware of a noise problem, which the tenant identified as coming from his piano, and that he tried to resolve it with styrofoam. I find on the evidence that the tenant did have loud music that disturbed other tenants. The tenant's testimony was mute concerning his dealings with his aboriginal neighbour; I accept that the tenant's behaviour with his neighbours was derogatory, unflattering, and that it was legitimately perceived as threatening. I find on the evidence that the tenant unreasonably disturbed other occupants or the landlord, and that the landlord had sufficient cause to serve the tenant with a 1 Month Notice to End Tenancy.

When a landlord issues a tenant with a 1 Month to End Tenancy on April 1, 2012, under Section 55(3) the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement; therefore the effective date of the end of the tenancy in this matter is May 31, 2012. Section 53 of the Act allows the effective date of a Notice to End Tenancy to be changed to the earliest date upon which the notice complies with the Act; accordingly I find that the effective date of the notice is changed from April 30, 2012 to May 31, 2012.

Conclusion

The tenant's application is dismissed. This tenancy will end May 31, 2012. If the tenant fails to comply, the landlord is at liberty to apply for an order of possession.

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: April 30, 2012.

Residential Tenancy Branch