



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, CNC, CNR, OLC, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant. Both parties appeared and gave testimony during the conference call.

The landlord applied for:

- An order of possession based on a Notice for Unpaid Rent and Utilities
- A monetary order for rent and utilities owed, pursuant to Section 67;
- An order to retain all or part of the security deposit
- A monetary order for the recovery of the filing fee

The tenant had applied for the following:

- An order to cancel the Ten Day Notice for Unpaid Rent and Utilities
- An order to cancel the One-Month Notice to End Tenancy for Cause
- An order to force the landlord to comply with the Act

Issues to be decided:

- Is the landlord entitled to an order of possession and monetary compensation for unpaid rent based on the Ten-Day Notice?
- Should the One-Month Notice to End Tenancy for Cause be cancelled as requested by the tenant?
- Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy started on October 1, 2011 with current rent of \$780.00 per month. A \$390.00 security deposit and a \$300.00 pet damage deposit is being held by the landlord in trust for the tenant.

Submitted into evidence was a One-Month Notice to End Tenancy for Cause dated March 30, 2012 with effective date of April 30, 2012. The stated cause was that "*The rental unit/site must be vacated to comply with a government order.*" No copy of the government order was in evidence.

Also submitted into evidence was a copy of the first page of a two-page Ten Day Notice to End Tenancy for Unpaid Rent dated April 2, 2012 effective April 13, 2012.

Other evidence included:

- A copy of the tenancy agreement
- Copies of receipts for rent paid.
- Copies of utility bills in the name of a third party, not participating in the hearing.
- Written testimony from the tenant and her witness
- Written testimony from the landlord including a chronology of events.

One Month Notice

The tenant testified that the landlord had issued the One-Month Notice to End Tenancy for Cause on March 30, 2012. The tenant testified that the landlord accused her of calling the city to report the landlord and that the landlord informed her that this action had allegedly resulted in an order from the municipality that he cease renting the suite.

The tenant stated that the landlord was very angry. The tenant stated that she decided to dispute the One-Month Notice to End Tenancy for Cause. According to the tenant, she felt that the landlord should have issued a Two Month Notice to End Tenancy for Landlord's Use, instead of the One-Month Notice to End Tenancy for Cause. The tenant testified that the landlord had confronted her at one point and the police were involved.

The tenant stated that, although she applied to dispute the One-Month Notice to End Tenancy for Cause, she had accepted the end of the tenancy and would be vacating at the end of April 2012.

The landlord's written testimony indicated that he had initially verbally advised the tenant she would have to move out at the end of May 2012 because of her alleged

complaints to the city about parking. However, he later decided to issue a One-Month Notice to End Tenancy for Cause on March 30, 2012 effective on April 30, 2012, when the tenant informed him that she would not pay her rent until April 1, 2012.

Ten-Day Notice

The tenant testified that she paid the landlord the full rent for April in cash on March 30, 2012. The tenant testified that the landlord did not give her a receipt for the payment, and she assumed that he would return with the receipt. The tenant testified that the payment was witnessed by her co-tenant. The tenant testified that it was a normal practice for the landlord to drop off rent receipts later on, and she sometimes had to request that receipts be given.

The tenant testified that the landlord was falsely claiming she did not pay the rent because he had a vendetta against her for supposedly contacting the municipality. The tenant also disagreed with the landlord's claim that outstanding utilities were owed. The tenant pointed out that the utility invoice in evidence clearly shows that it was paid.

The tenant is requesting that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled as no rent or utilities are owed.

The landlord disputed the tenant's claim that rent for April was paid. The landlord testified that when the tenant did not pay the rent on the due date, he contacted the tenant and was asked to assist the tenants financially so that they could put a security deposit on a new place. The landlord stated that he refused this request.

The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued because the tenant failed to pay any rent for April 2012 and he is seeking both an Order of Possession and monetary order for rent owed.

With respect to the utilities owed, the landlord referred to utility invoices showing outstanding balances. However, invoices indicated that the utility account was neither in the tenant's name nor the landlord's name. The invoices were issued to a third party who was not present at the hearing.

Order the Landlord to Comply

The tenant's application indicated that the tenant was seeking an Order to force the landlord to comply with the Act or agreement. The tenant testified that laundry facilities were included in the rent, but the landlord arbitrarily removed the washer and dryer without notice or compensation. The tenant also testified that the landlord had

confronted her and accessed the suite without written Notice.

The landlord acknowledged that the washer and dryer were removed because they required repairs. The landlord disputed the remainder of the tenant's testimony.

Analysis:

I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that, on a balance of probabilities, the tenant failed to pay the rent when it was due.

I find that the landlord is therefore entitled to rental arrears of \$780.00 based on the Ten Day Notice to End Tenancy for Unpaid Rent. I also find that the landlord is entitled to an Order of Possession. The tenant is no longer disputing that the tenancy is ending.

In regard to the utility charges put forth by the landlord, I find that the evidence presented does not support a claim by the landlord as the utility account is in another resident's name. In any case, I find that a term in a tenancy agreement that requires one tenant to collect utility charges from another tenant is an unconscionable term.

Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

I find that this term in the tenancy agreement respecting utility payment is not an enforceable term and therefore the portion of the landlord's application relating to this claim must be dismissed.

In regard to the tenant's application seeking an order that the landlord comply with the Act by restoring the laundry facilities, I find that Section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

However a service or facility, other than an essential or material one may be restricted or terminated provided that landlord(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the

termination or restriction of the service or facility.

I find that the laundry service was not essential to this tenancy and as such may be eliminated. However, I find that the landlord did not comply with the Act in failing to give 30 days written Notice before taking the machines away and failing to reduce the rent in an amount equivalent to the value of the laundry facilities. As the tenancy is ending, I do not find it necessary to order that the landlord restore the laundry facilities. However, I find that, under the Act, the tenant is entitled to a rent abatement for the sudden loss of this service and facility. I find that the tenant is entitled to monetary compensation of \$150.00

Based on the evidence and testimony, I find that the landlord is entitled to \$780.00. I find that the landlord may retain the tenant's \$690.00 security and pet damage deposits in partial satisfaction of the claim, leaving \$90.00 outstanding. In setting off the \$150.00 owed to the tenant with the \$90.00 owed to the landlord, I find that there is an amount of \$60.00 remaining in favour of the tenant.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective April 30, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the tenant a monetary order for \$60.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Neither party is entitled to be compensated for the filing costs. .

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 24, 2012.

Residential Tenancy Branch