



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; MNDC; OLC; ERP; PSF; RR

Introduction

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause issued July 18, 2012 (the "Notice"); for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; an Order that the Landlord make emergency repairs to the rental unit; an Order that the Landlord provide services or facilities required by law; and a reduction in rent.

The parties gave affirmed testimony at the Hearing. The Tenant's agent also provided interpretation from the English language to the Hindi language.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were provided to the Landlord's wife at the Landlord's residence. The Landlord acknowledged that he received the documents and therefore I find that the Landlord was sufficiently served for the purposes of this application, pursuant to the provisions of Section 71(2)(c) of the Act.

It was determined that the Landlord provided the Tenant copies of his documentary evidence on August 2, 2012.

Neither party had provided a copy of the tenancy agreement in evidence prior to the Hearing. At the conclusion of the Hearing, I invited both parties to fax me and each other a copy of the written tenancy agreement. The Landlord provided a copy to me and to the Tenant. The Tenant could not locate his copy, but agreed that the copy provided by the Landlord was an accurate copy. The Tenant's advocate provided a written submission to me and the Landlord after the Hearing concluded that I have not considered. I had explained to the parties that the only evidence I would accept after the Hearing had concluded was a copy of the tenancy agreement. I have considered the tenancy agreement and all testimony and documentary evidence that met the requirements of the rules of procedure.

Preliminary Matters

At the outset of the Hearing, the Tenant withdrew his application for an Order that the Landlord make emergency repairs to the rental unit. The Tenant's advocate stated that there were no emergency repairs required.

Issues to be Decided

- Is the Notice a valid notice pursuant to Section 47(1)(k) of the Act?
- Should the Landlord be ordered to comply with the tenancy agreement and return the stove to the rental unit?
- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?
- Is the Tenant entitled to a rent reduction pursuant to the provisions of Section 65(1)(f) of the Act?

Background and Evidence

The rental unit is one of two rental units in a house. A tenancy agreement was signed by the Landlord on June 11, 2012 and by the Tenant on June 18, 2012. Monthly rent is \$400.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$200.00.

On July 18, the Landlord issued the Notice, which he provided to the Tenant on July 19, 2012. The Tenant filed his application to cancel the Notice on July 23, 2012. A copy of the Notice was provided in evidence.

The Landlord testified that the City has a new law that a house can only have one rental suite and that the City advised him the Tenant's suite was illegal. The Landlord received a letter from the City dated July 3, 2012, informing him that an inspection of the Tenant's suite would be taking place on July 12, 2012. A copy of the City's letter was provided in evidence.

On July 11, 2012, the Landlord removed the stove from the rental unit. He stated that he and the Tenant had decided to remove the stove and to replace it after the inspection.

The Landlord stated that he wants to keep the Tenant, but that the City will fine him if the Tenant does not move out. The Landlord stated that he did not have an Order from the City, but that it was "common law" that the Landlord could only have one suite.

The Tenant's advocate submitted that there was no Order from the municipality and therefore the Notice was not a valid notice.

The Tenant seeks an Order that the Landlord return the stove to the rental unit immediately. The Tenant's advocate submitted that the stove was included in the tenancy agreement and that the Tenant has serious health issues that require food be broiled or cooked without fat. He stated that the Tenant has purchased a second-hand coleman stove for \$60.00 and a portable grill for \$23.00 in order to prepare his meals, but that neither of these items can broil food. In addition, the Tenant has to use the coleman stove outdoors because of safety concerns. The Tenant's advocate submitted that the Tenant has suffered a sharp decline in his health since the stove was removed and is now taking new medication to address this. The Tenant's advocate submitted that the Tenant was being harassed by the Landlord.

The Tenant also seeks a rent reduction for the decreased value of the rental unit and the cost of having to eat out. He seeks a reduction of \$150.00 per month for the months of July and August, 2012.

The Landlord stated that the Tenant did not appear to be in bad health and that the Tenant told the Landlord that he would stay for four months and not pay any rent. The Landlord testified that no stove or oven was included in the tenancy agreement. He stated that he provided the stove, not realizing that it would put him in jeopardy, and therefore put himself at risk.

Analysis

- Is the Notice a valid notice pursuant to Section 47(1)(k) of the Act?

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reason(s) provided on the notice. In this case, the Notice indicates the following reason:

"Rental unit/site must be vacated to comply with a government order."

I find that the Landlord did not provide sufficient evidence to uphold the Notice. The Landlord agreed that he received no Order from the municipality that the rental unit must be vacated. Therefore, **I grant the Tenant's application to cancel the Notice. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.**

- Should the Landlord be ordered to comply with the tenancy agreement and return the stove to the rental unit?

The parties disagreed whether or not the stove was included in the tenancy agreement. The copy of the tenancy agreement provided does not include the stove in the list of “What is included in the rent” section, paragraph 3b). The parties also disagreed about whether or not the stove was in the rental unit on the day that the Tenant took possession. However, it is clear that the Landlord provided the stove to the Tenant for his use. Therefore, I find that the tenancy agreement was amended to add the stove, pursuant to the provisions of Section 14(2) of the Act.

I find that the Landlord removed the stove on July 11, 2012, contrary to the provisions of Section 27 of the Act. The Tenant seeks return of the stove and therefore, **I Order that the Landlord comply with the tenancy agreement and return the stove to the rental unit immediately.**

- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant seeks to recover the cost of the second-hand coleman stove, portable grill, and restaurant meals. The Tenant’s application indicates he is seeking a total of \$600.00 for these items.

There is no dispute that the Landlord removed the stove from the rental unit. I have found that this was an action in violation of the tenancy agreement.

I find that the Tenant did not provide sufficient evidence with respect to his health or that any decline in his health resulted from the Landlord’s actions in removing the stove from the rental unit.

The Tenant did not provide any details with respect to the number of meals the Tenant had to have in restaurants, or receipts in evidence to support a claim of \$600.00.

However, I accept the Tenant's advocate's submission that he paid \$60.00 for the coleman stove and \$23.00 for the grill, second-hand. Receipts would not easily be available for second hand goods. Therefore, **I allow this portion of the Tenant's claim in the amount of \$83.00.**

- Is the Tenant entitled to a rent reduction pursuant to the provisions of Section 65(1)(f) of the Act?

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. The Tenant seeks a rent reduction in the amount of \$300.00 (\$150.00 for each of the months of July and August) for loss of use of the stove. The Tenant had use of the stove for a portion of the month of July, and I have ordered the Landlord to return the stove immediately to the rental unit. Therefore, I decline to reduce the rent in the amount claimed. However, I do find that the value of the tenancy has been diminished, even with the substitution of the coleman stove and grill that the Tenant has been compensated for. I accept the Tenant's advocate's submission that neither the coleman stove, nor the grill, are capable of broiling the Tenant's food. I also find that cooking outside on a coleman stove is not as convenient or desirable as using a regular stove inside. For these reasons **I Order a one-time rent abatement in the total amount of \$76.00**, calculated as follows:

15% per month, from July 11, 2012 to August 17, 2012 =
\$60.00 per month, prorated from July 11, 2012 to August 17, 2012 (38 days) =
\$60.00 per month = \$2.00 per day, @ 38 days = \$76.00

The Tenant is at liberty to apply for an additional rent reduction if the Landlord does not return the stove immediately.

Total monetary award for Tenant

The Tenant has established a total monetary award in the amount of **\$159.00**. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct his monetary award from future rent due to the Landlord.

Conclusion

I grant the Tenant's application to cancel the Notice to End Tenancy for Cause issued July 18, 2012. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

I Order that the Landlord comply with the tenancy agreement and return the stove to the rental unit immediately. The Tenant is at liberty to apply for an additional rent reduction if the Landlord does not return the stove immediately.

I find that the Tenant has established a monetary award in the amount of \$83.00 pursuant to the provisions of Section 67 of the Act. I find that the Tenant is entitled to a one-time rent abatement in the amount of \$76.00. Further to the provisions of Section 72 of the Act, **the total monetary award in the amount of \$159.00 may be deducted from future rent due to the Landlord.**

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: August 17, 2012.

Residential Tenancy Branch