



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNR, MNDC, MNSD, OLC, RP, LAT, RR, O, OPR, OPC, MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy, a monetary order, orders compelling the landlord to comply with the Act and perform repairs and orders authorizing the tenant to change the locks and reduce his rent. The hearing also addressed a cross-application by the landlord in which the landlord claimed an order of possession, a monetary order and an order permitting him to retain the security deposit in partial satisfaction of the claim.

At the hearing, the tenant claimed that he had not received the landlord's application for dispute resolution. The landlord provided evidence showing that the documents were sent to the tenant via registered mail on November 29. As the landlord has been sending documents to the tenant via registered mail throughout the tenancy and as all of those letters have been returned unclaimed rather than as undeliverable, I find on the balance of probabilities that the tenant is simply neglecting to collect registered letters. The tenant cannot avoid service of documents by failing to collect registered mail and I found that the landlord had properly served the tenant with notice of his claim and dealt with both applications during the hearing.

Issues to be Decided

Should the notices to end tenancy be set aside?

Is the tenant entitled to a monetary order as claimed?

Should the landlord be ordered to comply with the Act and perform repairs?

Should the tenant be given authorization to change the locks and reduce his rent?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that monthly rent was set at \$400.00 per month and that the tenant made a single \$400.00 payment on September 26, 2012, but the parties disagree on most of the other facts at issue. There is no written tenancy agreement.

The tenant claimed that the tenancy was to begin on October 1, 2012 and that the landlord agreed to accept a security deposit whenever he could get the cash together to pay it. The tenant testified that it wasn't until September 26 that he was able to move into the unit and that he'd only moved a few things in prior to that date because he wasn't able to connect with the person who gave him the keys to access the unit. The tenant claimed that the \$400.00 payment on September 26 was payment of rent for October.

The landlord testified that the tenancy was to begin on September 15, that the tenant was to pay a \$200.00 security deposit, \$200.00 in rent for September 15 – 30 and \$400.00 in rent for each month thereafter. The landlord understood that the \$400.00 September 26 payment was the \$200.00 security deposit and \$200.00 in rent for the partial month of September.

The parties agreed that on October 28, the landlord the tenant written notice that he would be inspecting the rental unit on November 4. The landlord testified that because of concerns expressed by another tenant and because he discovered that the tenant had changed the locks on the door, he was concerned about damage to the rental unit.

The parties further agreed that on November 4 the landlord changed the locks on the rental unit. The landlord testified that he changed the locks because of damage to the door and that he left the keys with another party and told the tenant to make arrangements with that person to collect his things. The landlord further testified that the door was significantly damaged and that he had to purchase and install a large strike plate to cover the large area of missing wood from the frame.

The tenant acknowledged that the door was damaged and testified that he had to change the locks because the keys given to him by the landlord did not work. He claimed that he attempted several times to contact the landlord, but the landlord did not answer his calls. The landlord testified that he did not receive any calls from the tenant.

The tenant testified that because the landlord changed the locks, he did not have access to his possessions for 6-7 days and that he incurred hotel expenses as well as costs for food, clothing, transportation and toiletries. The tenant provided no receipts to support his claim.

The landlord acknowledged that he changed the locks to the unit and asked the tenant to leave, but testified that he gave the tenant the keys to the new locks within 7 days and that the tenant told him that he had slept on a friend's couch while he was not in the rental unit.

The landlord testified that on November 13, 2012, he sent the tenant a 10 day notice to end tenancy for unpaid rent (the "Rent Notice") as well as a 1 month notice to end tenancy for cause (the "Cause Notice") via registered mail and also on that day put both notices through the mail slot in the tenant's door. At the outset of the hearing, I had asked the tenant whether he had received the notices on December 9, which is the date on which the notices are dated. The tenant stated that he had received the notices around December 9, but when I advised him that he did not appear to have made his application within 5 days of having received the Rent Notice, he changed his testimony and insisted that he had received the Rent Notice exactly 5 days before November 21, which is the date on which he amended his application to include a claim to dispute the notices.

The tenant claimed that he attempted to pay the landlord rent on a number of occasions, but the landlord refused the rent. He testified that his mother also phoned the landlord and offered to pay his rent, but the landlord told her there would be no point because the tenant was being evicted for cause. The tenant provided a letter from a witness who claimed that she witnessed the tenant try to give the landlord rent money on the date that he changed the locks. When I asked the tenant whether he tried to hand the landlord cash or a cheque, he replied that he did not hand the landlord money, but told the landlord that he had cash in the bedroom.

The landlord testified that the tenant told him that he would deposit a cheque to his account, but did not do so. He acknowledged having received a telephone call from the tenant's mother and denied having told her that he would not accept rent, but stated that he made it clear that payment of rent would not save the tenancy. The landlord denied having ever been told that the tenant had cash and testified that at no time did the tenant attempt to put a rent payment into his hands. The landlord argued that because the tenant had directly deposited cash on September 26, he clearly had the knowledge and means to pay via direct deposit. The tenant replied that he had lost the landlord's banking information.

The landlord seeks to recover unpaid rent for the months of October-December inclusive as well as \$49.27 for utility charges from September 15 – November 15, \$27.99 for the cost of replacing the locks on the door and \$307.99 for the cost of temporarily repairing the door jamb and frame and the estimated cost of permanently repairing the door jamb.

Analysis

First addressing the notices to end tenancy, given the inconsistencies in the tenant's testimony, I find it unlikely that he filed his claim to dispute the notices within 5 days of having received them. However, he clearly could not recall when exactly he had received the notices. Section 90 of the Act provides when documents are deemed to have been received and states that documents sent via registered mail are deemed received 5 days after mailing, which would be November 18, and documents left in a mail slot are deemed received 3 days after service, which would be November 16. I am prepared to give the tenant the benefit of the doubt and find that he received the notices on November 16, which is exactly 5 days before he filed his claim to dispute the notices. I find that the tenant filed his claim to dispute the notices within the appropriate time.

Because the tenant's testimony was inconsistent in several respects and he was vague in his responses to my questions and because the landlord's testimony was consistent throughout even when making admissions to his detriment, I question the credibility of the tenant and where the testimony of the parties conflict, I prefer the evidence of the landlord.

I find it unlikely that the tenant attempted to pay rent to the landlord. Because the tenant was aware of the landlord's address, having sent documents to him at that address, the tenant could easily have mailed his rent should the landlord have refused it. I also find that the tenant could have directly deposited rent monies into the landlord's account after having successfully done so in the past. Because the tenant received keys to the unit prior to October 1, when he claimed the tenancy was to begin, and because he stated that he would have gotten the keys earlier but he could not connect with the person from whom he was supposed to receive the keys, I find it more likely than not that the parties had agreed that the tenancy would begin on September 1, 2012 and that the tenant simply delayed in moving into the unit.

I find that the \$400.00 payment made on September 26 represented the \$200.00 security deposit and \$200.00 in rent for September 15-31. I therefore find that the tenant is liable for rent monies for the months of October – December inclusive. Because the landlord illegally locked the tenant out of the rental unit for one week in November, I find that he is not entitled to recover rent for that week and I deduct \$100.00 from the total rent entitlement. I award the landlord \$1,100.00.

I find that the tenant received the Rent Notice on November 16 and I find that he failed to pay the rent within 5 days of receiving that notice. I find that his offers to pay were meaningless as the tenant did not have either cash or a cheque in hand at the time he made the offers. I find that the landlord is entitled to end the tenancy and I dismiss the

tenant's claim for an order setting aside the notices. I grant the landlord an order of possession which may be filed in the Supreme Court and enforced as an order of that Court.

As I have found that the tenancy ended pursuant to the Rent Notice, it is unnecessary to address the Cause Notice.

I find that the landlord is entitled to recover the \$49.27 for utility charges from September 15 – November 15 and the \$27.99 for the cost of replacing the locks. I find insufficient evidence to prove that the tenant needed to change the locks and in any event, the tenant should have given the landlord a key to the new locks. I award the landlord \$49.27 and \$27.99 for these claims.

The landlord provided no photographs showing extensive damage to the door and did not provide evidence of the cost of the materials he purchased to repair the door. Although the tenant acknowledged having damaged the door, without seeing the extent of the damage or the receipts and because the professional work has not been performed, I am not satisfied that the landlord has proven this claim on the balance of probabilities and the claim for the cost of door repairs is dismissed.

As the landlord has been substantially successful, I award him the \$50.00 filing fee paid to bring his application.

Turning to the tenant's monetary claim, the landlord admitted that he illegally locked the tenant out of the rental unit. In the absence of receipts, I am not satisfied that the tenant spent the approximately \$1,500.00 that he is claiming. I find it more likely than not that the tenant did not incur hotel costs and I dismiss the claim for \$700.00 in hotel charges. I find that the tenant would have had to purchase meals, toiletries and possibly clothing. I find that an award of \$200.00 will adequately compensate the tenant for these costs and I award him that sum. The claim for transportation costs is dismissed as the tenant would have had to pay those in any event.

As the tenancy is ending, the balance of the tenant's claims are dismissed.

Conclusion

In summary, the tenant has been awarded \$200.00 and the landlord has been awarded a total of \$1,227.26 which represents \$1,100.00 in unpaid rent, \$49.27 in utility charges, \$27.99 to replace locks and the \$50.00 filing fee. Setting off these claims as against each other leaves a balance of \$1,027.26 payable by the tenant to the landlord. I grant

the landlord a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: December 10, 2012

Residential Tenancy Branch