



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sahar Investment
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNE, CNR, MNR, RP, RPP, LAT, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for end of employment with the landlord (the 1 Month Notice) pursuant to section 48;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to return the tenants' personal property pursuant to section 65; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

Preliminary Issues – Service of Documents

The landlord's current agent (the landlord) testified that he posted the 10 Day Notice on the tenants' door at 5:05 p.m. on January 17, 2013. The landlord entered into evidence a copy of a photograph of the 10 Day Notice posted on the tenants' door. He also gave the name of a witness who watched him post this Notice on the tenants' door. The tenant who attended this hearing (the tenant) testified that he was working in another province when the posting occurred. He said that the other tenant, his son, was in the

area on January 17, 2013, but neither he nor his son were actually living at the rental unit. The tenant said that he used this rental unit as a mailing address, to store his employment equipment and some of his belongings. In his application for dispute resolution, the tenant stated that he first received the 10 Day Notice on January 25, 2013. The tenants applied for dispute resolution on January 29, 2013. The landlord testified that the landlords received the tenants' dispute resolution hearing package sent by the tenants by registered mail on February 16, 2013. I am satisfied that the 10 Day Notice and the dispute resolution hearing package were served by the parties to one another in accordance with the *Act*.

The landlord testified that he received copies of the tenants' written evidence. The tenant testified that the tenants did not receive copies of the landlords' written evidence. The landlord said that he posted copies of the landlords' written evidence on the door of the rental unit because the tenants had not provided the landlords with a new mailing address after the landlords took possession of the rental unit on January 29, 2013. He noted correctly that the address identified by the tenants for service of documents or notices associated with the tenants' application was the dispute address.

Although the tenants did not formally change the mailing address after filing their application for dispute resolution, they did include a February 1, 2013 address to which the tenant requested the return of their security deposit. The landlord acknowledged receipt of this address the day before this hearing, as part of the late evidence submitted by the tenants.

Under the circumstances, I find that the landlords already had possession of the rental unit identified by the tenants as their mailing address for the purposes of the tenants' application when the landlords attempted to serve their written evidence to the tenants. I find that the landlords did attempt to serve their written evidence to the tenants in the best way available to them, given that they did not receive the tenants' new forwarding address until shortly before this hearing.

Other Preliminary Issues

I also note that an anonymous third party who identified himself only as "Guy" connected with this teleconference call at the commencement of this hearing. After repeatedly asking this person to identify himself and after consulting with both parties who were not expecting any witnesses to participate in this hearing, I took action to disconnect this anonymous caller from the hearing.

At the commencement of the hearing, the parties confirmed that the only landlord notice to end this tenancy issued for this tenancy was the 10 Day Notice. The tenant withdrew

the application to cancel the 1 Month Notice as no such notice was issued for this tenancy on the proper Residential Tenancy Branch (RTB) forms. This portion of the tenants' application is withdrawn.

Although the tenants requested a monetary award of \$1,276.00 in their application for dispute resolution, their February 1, 2013 letter to the landlords entered into late written evidence requested \$3,050.00 from the landlords. At the commencement of the hearing, I advised the tenant that I would only be considering the tenants' request for the \$1,276.00 monetary award identified in their application for dispute resolution.

After a 35-minute hearing and after he presented his sworn testimony, the tenant became very agitated when he became concerned that he would not be successful in his application. He commenced a rapid torrent of profane and abusive language directed at me and the landlord's agent. As I was in the process of advising him that continued language of this type would not be tolerated and would lead to his disconnection from the hearing, he terminated his participation in the teleconference call, hurling more obscenities in the process. After asking the landlord to confirm his mailing address, I ended this teleconference hearing without taking any further sworn testimony from the landlord.

Issues(s) to be Decided

Should an extension of time be granted to the tenants to apply to cancel the landlords' 10 Day Notice? Has this tenancy ended and is it necessary to issue an Order of Possession? Are the tenants entitled to a monetary Order for losses arising out of this tenancy? Should an order be issued with respect to the return of the tenants' personal possessions? Should any other orders be issued against the landlords?

Background and Evidence

The tenant testified that this one-year fixed term tenancy commenced on July 1, 2012 on the basis of a Residential Tenancy Agreement (the Agreement) signed between the tenants and the landlords' former agent on June 30, 2012. According to the terms of that Agreement, monthly rent was set at \$650.00 plus hydro and heat. The tenant claimed that the tenants paid a \$300.00 security deposit.

The tenants submitted written and oral testimony that the tenant who attended this hearing had an employment arrangement with the agent of the landlords, which he believed made him an employee of the landlords. He gave evidence that he paid rent directly to the landlords' former agent. The landlords entered written and oral evidence that they terminated their employment relationship with their former agent on December 15, 2012. They provided notices in public areas of this rental building of this change

and advised tenants that their new agent would be speaking with tenants over the next few weeks and would be the new recipient of all future rent cheques. The landlords entered into written evidence copies of these notices.

The tenant testified that he remained unaware of the landlords' termination of their former agent and he continued to pay rent for January 2013 to the former agent, who allegedly accepted this payment. The landlord testified that the records provided to them by the former agent did not include the tenants' Agreement and the landlords repeatedly requested a copy of any Agreements reached between the tenants and the landlords' former agent. The tenant said that there was no written agreement between him and the landlords or their former agent with respect to employment. However, he said that he did work for the landlords and their former agent, performing painting and other duties on the landlords' buildings. The landlord testified that the first time the landlords were provided with a copy of the Agreement was shortly before this hearing.

The landlord entered written evidence that he spoke with the tenant who did not attend this hearing on January 18, 2013, the day after the 10 Day Notice was posted on the tenants' door. This evidence noted that they had discussed the non-payment of rent for January 2013. The other tenant allegedly advised the landlord that the tenants had paid their January 2013 rent to the landlords' previous agent, who had cashed their rent cheque. The landlords' evidence maintained that the other tenant "failed to provide a valid rental agreement, payment of rents and cancelled checks showing payment of rents and we have no record of any deposits made from" either tenant.

When the landlords did not receive a January 2013 rental payment for this rental unit and could not obtain documentation from the tenants to show their Agreement with the former landlords' agent, the landlords posted the 10 Day Notice on the tenants' door. As they saw no activity in this rental unit and it was unclear if anyone was actually living there after the 10 Day Notice was posted, the landlords posted a Notice of Entry document on the tenants' door on January 28, 2013. This Notice advised the tenants that the landlord was planning to enter the rental unit between 12:00 p.m. and 3:00 p.m. on January 29, 2013, for the purposes of determining whether the tenants had vacated the rental unit, to check for a potential plumbing leak and make repairs, and to take photographs for the dispute resolution hearing. Although this Notice was issued on a 2007 version of an RTB document, I am satisfied that the Notice posted contained the same basic information as that provided on the current equivalent RTB document.

The tenant did not dispute the landlord's claim that the landlord found that the tenants had changed the locks of the rental unit, in violation of the *Act*. The tenant did not dispute the landlord's assertion that the landlord found that the hydro had been

disconnected and tagged by the hydro company when the landlord attended the premises on January 29, 2013. The landlord entered photographic evidence of the condition of the premises when he accessed the premises on January 29, 2013. These photographs noted that garbage had been left behind, a dismantled futon was present, and some assorted pails, dog food and other materials remained in the rental unit. Based on the landlord's inspection of the rental unit, the landlord asserted that the premises had been abandoned, commenced storing the remaining items for the tenants if they wished to retrieve them, and changed the locks.

The landlord gave undisputed sworn testimony that that the other tenant obtained most of the possessions left behind at the end of this tenancy the day prior to this hearing. The tenant said that he had not been able to contact his son (the other tenant) and was uncertain as to what his son had obtained the previous day. The tenant expressed concern as to his loss of pails of paint and materials associated with his employment that had been stored in the rental unit.

The tenants listed the following items in their February 1, 2013 request for reimbursement to the landlords:

Item	Amount
Moving Costs	\$500.00
Recovery of Rent for New Premises	650.00
Loss of 9 Pails of Paint at \$125.00 Each	1,125.00
Return of Security Deposit	300.00
Light Fixtures and Tools	475.00
Total of Above Items	\$3,050.00

Other than the above list, the tenants did not provide any receipts, estimates or invoices to support their claim for any of the above items.

Analysis – Tenants' Application to Cancel the 10 Day Notice

The tenants applied for an extension of time to apply to cancel the 10 Day Notice. Although the Act enables me to grant such an extension under exceptional circumstances, I find no such circumstances evident in this case. The landlord entered undisputed evidence that he discussed the reasons for posting the 10 Notice on the tenants' door with the other tenant who clearly received that Notice on January 18, 2013, the day after the 10 Day Notice was posted. The other tenant was aware that the landlords had not received the January 2013 rent that the tenants claim to have paid to the previous agent of the landlords. They provided no cancelled cheques or receipts to

demonstrate that this payment had been made, and only provided late evidence that there was any signed Agreement between the parties.

According to section 90 of the *Act*, a 10 Day Notice posted on a tenant's door is deemed served on the third day after its posting. Although there is undisputed evidence that the other tenant had the 10 Day Notice by January 18, 2013, I find that the 10 Day Notice was deemed served on January 20, 2013. Whether or not the tenant who attended this hearing received the 10 Day Notice on January 25, 2013, as he maintains, I find that the tenants failed to demonstrate that they paid their January 2013 rent within five days of being deemed to have received the 10 Day Notice. The tenants' application for dispute resolution pursuant to section 46(4) of the *Act* was filed with the RTB on January 29, 2013, more than five days after January 20, 2013. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by January 27, 2013.

As it appeared to the landlord that the tenants may have complied with the effective date cited on the 10 Day Notice and vacated the rental unit, the landlord posted a Notice on the tenants' door advising the tenants that he intended to inspect the rental premises. Based on a balance of probabilities, I find that the landlord made a reasonable assumption that the premises had been abandoned and the tenancy had ended when he entered the premises on January 29, 2013. I find that the photographs provided by the landlord of the contents of the rental unit on January 29, 2013 and his undisputed sworn testimony led to a reasonable conclusion by the landlord that the tenants had abandoned the rental unit. Much of the material that remained appeared to be garbage or items of little value abandoned by the tenants. The only substantive piece of furniture that remained in the rental unit was a dismantled or possibly broken futon. In reaching my finding that the tenants abandoned this rental unit by January 29, 2013, I rely heavily on the testimony of both parties that there was no hydro service in this rental unit by that date. Without hydro service and in the absence of any typical furnishings that would be expected if tenants were still in occupancy of a rental unit, I find that the landlord reasonably concluded that the premises had been abandoned, thus justifying the landlords' changing of the locks in accordance with the *Act*.

Although somewhat of a moot point at this stage given that the landlord already has possession of the rental unit, I dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply.

Since this tenancy has clearly ended, many of the orders sought by the tenants in their application are also moot. However, two issues still need to be considered, even

though this tenancy has concluded. First, the tenants have applied for a monetary award of \$1,276.00 for losses arising out of this tenancy. Second, the tenants have applied to recover their personal possessions that were still being held by the landlords when the tenants applied for dispute resolution.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

As noted above, I find that the landlord ended this tenancy when he made a reasonable assumption that the tenants had abandoned the rental unit in compliance with the effective date of the 10 Day Notice. As such, the tenants are not eligible to recover moving expenses or additional rent that they were required to pay for a new tenancy. In addition, I find that the tenants have not provided sufficient evidence to demonstrate any actual losses arising out of the landlords' actions. They provided little meaningful description as to why they believed that the losses claimed should be recovered from the landlords. For these reasons, I find the tenants' application woefully deficient in demonstrating entitlement to any form of monetary award from the landlords. Other than the tenant's statements and claims, there is little evidence that the tenants lost anything of value during this tenancy. For these reasons, I dismiss the tenants' application for a monetary award without leave to reapply.

Turning to the tenants' application to recover their personal possessions from the landlords, I find that there was a very recent development with respect to this portion of the tenants' application that occurred shortly before this hearing. As the tenant had not yet spoken with his son, he was uncertain as to whether his son had retrieved items of value from the landlords. The landlord said that he was still willing to let the tenants retrieve items left behind at the end of this tenancy. It appears to me that this portion of the tenants' claim has either already been resolved or could still be resolved. As such, I dismiss the tenants' application to have their personal possessions returned to them **with** leave to reapply.

The tenant will be in a better position to assess whether there is any need for another application for dispute resolution with respect to the return of personal possessions once he has had a chance to communicate with his son and review those items his son

retrieved the day before this hearing. I would encourage the tenant to speak with his son as soon as possible and notify the landlord very soon if there are items of value that he would like the landlord to make available to him.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover their filing fee from the landlords.

Conclusion

I dismiss the tenants' application for an extension of time to apply to cancel the landlords' 10 Day Notice without leave to reapply. I also dismiss the tenants' application to cancel the 10 Day Notice without leave to reapply. I find that this tenancy ended on January 29, 2013, when the landlord made a reasonable conclusion that the tenants had abandoned the rental unit in compliance with the landlords' 10 Day Notice.

The tenants' application to cancel the 1 Month Notice is withdrawn.

I dismiss the tenants' application for a return of personal possessions left in the rental unit at the end of this tenancy with leave to reapply.

I dismiss the tenants' application for a monetary Order and all other portions of the tenants' application without leave to reapply.

In closing, I note that the tenants will need to submit a new written request for a return of their security deposit containing their forwarding address to the landlord(s). I do not find that providing such notice as part of their written evidence package for this hearing is a satisfactory method of providing their address to the landlords for the purposes of section 38 of the *Act*.

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: February 26, 2013

Residential Tenancy Branch

