



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes CNR, CNC, MND, MNR, MNSD, MNDC, OPR, FF

Introduction

This is an application by the tenant to cancel a Ten Day Notice to End Tenancy for Unpaid Rent. In addition, the tenant is also seeking a monetary order for compensation against the landlord for damages. The tenant's application indicated that the tenant was also requesting an order to cancel a One-Month Notice to End Tenancy for Cause, but this was clarified by the parties to be an error as no such Notice was served on the tenant.

Preliminary Matter

At the hearing held on May 1, 2013, it was determined that only the portion of the tenant's application seeking to cancel the Ten Day Notice to End Tenancy for Unpaid Rent would be heard at that time.

A request was made by the tenant that he be permitted to amend the application to seek monetary compensation for damages. This amendment was objected to by the landlord on the basis that the late submission of the tenant's amended claim and the delay in receiving the tenant's evidence supporting the tenant's monetary claim, made it impossible for the landlord to prepare and submit his evidence to dispute the application. The landlord argued that there was not enough time before the hearing to prepare and serve the applicable documents.

It was therefore agreed that the hearing would be adjourned in order to allow more time for the parties to submit and serve their evidence regarding the tenant's monetary claim. The hearing was reconvened on May 30, 2013 to deal with the monetary portion of the tenant's application.

During the reconvened hearing on May 30, 2013, the landlord testified that the landlord had an application too, seeking monetary compensation against the tenant for rent, utilities and other damages which was scheduled to be heard on June 6, 2013.

Rule 2.2 of the *Residential Tenancy Rules of Procedure*, permits the Arbitrator presiding over the hearing to join separate applications to be heard at the same time. In

determining whether to join Applications for Dispute Resolution, the Arbitrator must consider the following criteria:

- a) whether the applications pertain to the same residential property, or residential properties which appear to be managed as one unit;
- b) whether all applications name the same landlord;
- c) whether the remedies sought in each application are similar; or
- d) whether it appears that the arbitrator will have to consider the same facts and make the same or similar findings of law in resolving each application.

I find that the issues to be determined in regard to the two applications pertain to the same residential property, involve the same parties and both are seeking monetary remedies. Therefore they both require the arbitrator to consider the same facts or similar findings of law in determining each of these two applications.

Accordingly, I ordered that the tenant's and the landlord's applications be joined and heard together with a single decision relating to the tenant's hearings held on May 1, 2013 and May 30, 2013 as well as the subsequent hearing on the landlord's monetary claim that was scheduled to be heard on June 6, 2013.

Both parties were present at all three of the hearing dates. At the start of each of the three hearing sessions, I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues(s) to be Decided

- Should the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled?
- Is the tenant entitled to monetary compensation?
- Is the landlord entitled to monetary compensation for rental arrears, utilities, repairs and other damages?

Background and Evidence

The tenancy began on September 1, 2012. The tenancy agreement confirms that the rent is set at \$1,100.00 per month.

A security deposit of \$550.00 and pet damage deposit of \$550.00 were paid.

The landlord testified that the rent did not include the cost of utilities. The landlord stated that throughout the tenancy, the tenant was continually in arrears with utility payments to the landlord. However, the utility accounts have now been placed in the tenant's name.

Notice to End Tenancy

The first issue to be heard is to determine whether the Ten Day Notice to End Tenancy for Unpaid Rent should be cancelled or enforced.

The landlord testified that, after the tenant fell into arrears for utilities, a Ten Day Notice to End Tenancy for Unpaid Utilities was issued to the tenant on February 12, 2013, seeking \$932.36 for utilities owed. The landlord was seeking an Order of Possession on this basis.

However, the tenant testified that he paid these arrears in full and the tenant submitted documentation to verify this.

The landlord testified that on March 21, 2013 the tenant was given subsequent bill for utilities for the next billing period in the amount of \$617.46 and the tenant failed to pay the latest charges. A Ten Day Notice to End Tenancy for Unpaid Rent was issued on April 12, 2013 and this is the Notice under dispute by the tenant in his application filed on April 15, 2013.

The landlord testified that the tenant then also neglected to pay \$1,100.00 rent owed for May 2013, and another Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant. According to the parties, the tenant then paid the rental arrears for May to cancel this Notice.

The landlord testified that, despite the payment of the rental arrears, the tenant is still in arrears for the original \$617.46, shown in the April 12, 2013 Notice. Furthermore, the tenant has since failed to pay \$1,100.00 in rent owed for the month of June 2013.

The tenant acknowledged not paying the rent for June 2013 and explained that he was awaiting the outcome of the hearing on his monetary claims, in which the tenant was alleging overcharged rent.

The tenant also acknowledged that he had not paid the \$617.46 still owed for utilities but testified that this was because he was disputing some of the charges that the landlord included as "utilities".

The tenant stated that he objects to being forced to pay \$29.00 for the use of the telephone, as part of the utility charges, which is still registered in the landlord's

name. The tenant also pointed out that the poor insulation in the building, crawl space and around the water heater, as well as gaps in windows, doors and walls have driven the cost of utilities upwards.

The landlord argued that the residence is fit for habitation, but it is a rustic cottage. The landlord feels that the tenant's expectations are not realistic.

The landlord testified that, although there are still outstanding arrears in the utilities from the past, the tenant has since placed the hydro account in his own name.

Monetary Claim Landlord

In addition to the \$617.46 utility arrears and the \$1,100.00 outstanding rent for June, the landlord is also seeking monetary compensation for damages. According to the landlord, the damages include, \$150.00 for the estimated cost for damage to a storage door and removal of the lock and \$500.00 for "*Loss of privacy and trust*".

The tenant also acknowledged that he removed one of the landlord's locks, but denied damaging the door. The tenant testified that he is willing to pay to replace the 3 locks, which were identically keyed. The tenant estimated the cost at \$60.00.

In regard to the landlord's allegation of loss of privacy and trust, the landlord felt that the tenant's disruptive conduct warranted this additional compensation for the landlord in the amount of \$500.00.

Monetary Claim - Tenant

The tenant testified that the landlord had advertised the rental unit at \$1,050.00, but when they went to sign the contract, the landlord arbitrarily added an additional cost of \$50.00 because the tenant had a pet dog. The tenant is therefore requesting a rent abatement of \$50.00 per month for ten months.

The landlord acknowledged that the rental rate for a no-pets unit, as advertised, would have been \$1,050.00. The landlord pointed out that, with this knowledge, both parties had freely agreed that the rent would be set at \$1,100.00 because the unit was converted from a pet-free unit to a pet permitted unit.

The tenant is seeking an additional rent abatement of \$50.00 per month for the landlord's failure to repair or replace the existing stove which features a large non-functioning oven and a small oven that is operational. The tenant testified that they were never told before agreeing to the tenancy, that they would be

forced to use the smaller oven, which is approximately 18 inches wide and apparently is not large enough to fit some of their bakeware.

The landlord argued that the alternate oven, though small, is completely functional to service the tenants' needs. According to the landlord, the stove in the cabin is a heritage model and parts are difficult to find. The landlord does not agree that the compensation being claimed by the tenant is warranted.

The tenant testified that the rental unit was presented as a furnished home, but household furnishings were found to be ragged, unsanitary, worn out and damaged beyond repair. The tenant submitted photos that showed two soiled sofas with ripped cushions and lampshades that were falling apart. The tenant testified that the bed was not fit to sleep in and had to be replaced by the tenant. The tenant pointed out that they had contracted for a livable furnished home and feel that they should be compensated for the lack of adequate furnishings with a retro-active rent abatement of \$50.00 for ten months and lower rent continuing in future.

The landlord argued that the furniture was not in new condition and, although not stylish, but was still serviceable. The landlord stated that the tenant agreed to rent the premises without physically inspecting the home after having sent a representative to check over the premises for suitability. The landlord pointed out that these furnishings were in the unit at that time. The landlord disagrees that an abatement in rent should be granted.

The tenant testified that, when they took possession of the rental unit, they found that it was still dirty from the previous tenants and required 24 hours of intensive cleaning. The tenant stated that the wood floor was coated with grime and submitted a photograph of the tenant scrubbing the dirt away and other photos of specific areas of the cabin that appeared to be dirty. The tenant is claiming compensation of \$720.00 representing 24 hours cleaning by two people at the rate of \$30.00 per hour.

The landlord disputed that the rental unit was turned over to the tenant in a dirty condition. The landlord testified that they spent several hours cleaning the unit prior to renting and it was in a clean condition and readied for the tenant to move in. The landlord pointed out that the entire living area is only 1,000 square feet and would not take 24 hours to clean. The landlord stated that the floor was merely discoloured over the many years of use.

In addition to the other claims, the tenant is also claiming \$200.00 compensation for the landlord's actions in cutting off their power on April 17, 2013.

The landlord did not deny that he took this action, which he felt was necessary in order to prompt the tenant to pay the overdue utility bills and to transfer the utility accounts into the tenant's name. The landlord feels that the amount of the tenant's claim for this incident, which only lasted approximately 24 hours, is excessive.

Analysis Notice to End Tenancy

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 the Act, the regulations or the tenancy agreement.

Section 46(6) of the Act provides that, if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after a written demand for payment has been issued, then the landlord may treat the unpaid utility charges as unpaid rent and may serve the tenant with a Ten Day Notice to End Tenancy for Unpaid Rent and Utilities.

In this instance I find that the landlord has established that the tenant does owe money for outstanding utilities.

With respect to the tenant's objection to the telephone service being included in the utility charges, I accept the landlord's testimony that payment of the landlord's telephone line is a term in the tenancy agreement.

However, I find that Section 6(3) of the Act states that a term of a tenancy agreement is not enforceable if a) the term is not consistent with the Act or 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. In addition, section 5 of the Act states that landlords or tenants may not avoid or contract out of the Act or Regulation and that any attempt to avoid or contract out of the Act or Regulations is of no force or effect.

The definition of "unconscionable" in section 3 of the Residential Tenancy Regulations is a term of a tenancy agreement that is oppressive or unfair to one party.

I find that a term requiring a tenant to pay for a telephone registered in another person's name constitutes an unconscionable term. Therefore, regardless of what the tenancy agreement states, I find that the utility bills should not include the cost of a telephone registered under the landlord's name.

I find that the landlord is entitled to compensation for a portion of the funds being sought for outstanding utility arrears. I set this amount at \$588.46, comprised of \$617.46, minus the \$29.00 allocated for the telephone cost.

I find that the landlord is not entitled to an Order of Possession based on the Ten Day Notice to End Tenancy for Unpaid Rent, as the tenancy was reinstated by the parties after the April 12, 2013, 10-Day Notice was served. Accordingly the Notice is canceled and of no force nor effect.

Analysis: Monetary Compensation-Landlord

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the amount to compensate for the claimed loss
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

With respect to the claim of \$150.00 for the door and locks, I find that the tenant freely admitted to removing one of the three same-keyed padlocks. I find that the tenant also consented to repay the landlord in the amount of \$60.00. I find that this compensation to the landlord is warranted and the landlord is entitled to \$60.00.

In regard to alleged door damage, I find that the landlord has failed to submit sufficient evidentiary support for this portion of the claim and it must be dismissed.

In regard to the landlord's request for \$500.00 compensation, due to loss of privacy and trust, I find that this monetary claim failed to pass all elements of the test for damages. A claim for damages must be based on the other party's violation of the Residential Tenancy Act, that has caused a quantifiable and verifiable loss to the other party as a result. I find that no section of the Act has been contravened to support this monetary claim and no specific loss has been proven. Accordingly, this portion of the landlord's claim must also be dismissed.

Analysis: Monetary Compensation- Tenant

In regard to the tenant's claim for a rent abatement of \$50.00 per month for ten months, which the tenant based on being charged higher rent than advertised, I accept the landlord's testimony that both parties had freely negotiated the rent and agreed that the monthly rate would be set at \$1,100.00, because the unit was converted from a pet-free unit to a pet permitted unit. Therefore, I find that the tenant's claim does not meet the

test for damages because there was no violation by the landlord of either the Act or agreement.

In regard to the rent abatement being sought by the tenant for the landlord's failure to provide the large oven that appeared to be part of the rental unit, I find that there is no violation of the Act in providing a smaller oven. In fact, the Act does allow a landlord to reduce or restrict non-essential services and amenities.

Although 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, or if it is considered a material term of the tenancy agreement, a service or facility, other than an essential or material one may be restricted or terminated. That being said, the landlord is required to:

(a) give 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduce 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 landlord did not comply with section 27 of the Act, nor did the landlord comply with the implied terms in the tenancy agreement that the stove, as it appeared would include an expectation that the main oven was in working condition.

As a lesser oven was provided, I find that there was a reduction in the value of the tenancy and the tenant's claim satisfies the test for damages. I find that the tenant is entitled to a rent abatement of \$25.00 per month for 10 months for a total amount of \$250.00 retroactive abatement and that the rent going forward will be reduced by \$25.00 per month until the larger oven is functional.

I find that section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. The landlord's obligation applies regardless of what the parties agree to in their contract.

In regard to the tenant's claim for a rent abatement for the substandard furnishings, I accept the testimony and evidence that verifies that furnishings were included in the rent. I find that there is an expectation that facilities, services and amenities included in the rent, including furniture or fixtures, must be clean, in good repair and able to be utilized by a tenant for their intended purpose. In this instance, however, I find that the furnishings in the unit had clearly reached the end of their useful life. For this reason, I find that the tenant should not be charged for inclusion of household furniture in the

rent. I find that the tenant is entitled to a retro-active, and continuing, rent abatement of \$50.00 per month for 10 months totaling \$500.00. I find that the current rent will be reduced a further \$50.00 per month as an unfurnished home.

In regard to the cleanliness of the rental property when the tenant moved in, I find that the landlord did not conduct a move-in condition inspection report jointly with the tenant, as the Act requires. However, based on the photos submitted by the tenant, it is evident that the floor was not completely clean when the tenant took possession, nor were some of the other areas in the unit, such as the oven and the toilet. For this reason, I grant the tenant compensation for 10 hours of the cleaning in the amount of \$300.00.

With respect to compensation for the landlord's actions in cutting off the tenant's power on April 17, 2013, I find that this was a clear violation of the Act and the tenant did suffer a loss and substantial inconvenience as a result. I grant the tenant compensation of \$150.00 for this loss.

Based on the evidence before me, I find that the landlord is entitled to total monetary compensation of \$648.46, comprised of \$588.46, for utilities and \$60.00, for the cost of replacing the locks.

Based on the evidence before me I find that the tenant is entitled to total monetary compensation of \$1,250.00, comprised of \$250.00 retroactive rent abatement for 10 months for the loss of the large oven, \$500.00 retroactive rent abatement for 10 months loss of furnishings, a \$300.00 sum for 10 hours of cleaning, a \$150.00 sum for the loss of hydro services and reimbursement for the \$50.00 cost of the application.

In granting the ongoing abatement of \$25.00 per month for the oven and \$50.00 for deficient furnishings, I hereby order that, **starting July 1, 2013**, the monthly rental rate for this rental unit will be reduced from **\$1,100.00** per month to **\$1,025.00**, per month, to reflect the lower value created by the loss of amenities.

In setting off the two monetary amounts granted to the landlord and tenant, I find that, after subtracting the \$648.46 awarded to the landlord, the tenant is entitled to the remainder of \$551.54. I order that this amount may be deducted by the tenant as a one-time lump-sum amount from the \$1,100.00 outstanding rental arrears still owed to the landlord for the month of June 2013.

Conclusion

Both parties are partially successful in the applications. The landlord and tenant are granted monetary compensation which was set off against each other, a continuing rent abatement is granted and the Ten Day Notice to End Tenancy for Unpaid Rent is cancelled.

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: June 06, 2013

Residential Tenancy Branch