



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause and a monetary order. Both parties appeared and had an opportunity to be heard. The landlord acknowledged receipt of the Application for Dispute Resolution and the Amended Application for Dispute Resolution.

Issue(s) to be Decided

- Does the landlord have grounds to end this tenancy?
- Is the tenant entitled to a monetary order and, if so, in what amount?

Background and Evidence

This month-to-month tenancy commenced sometime in May of 2013. The monthly rent of \$700.00 is due on the first day of the month. The tenant paid a security deposit of \$300.00.

The rental unit is a small one bedroom cabin. It is part of a complex that used to be a motel but now all the units are rented monthly. There are nine cabins and one duplex building for a total of eleven rental units. The landlord and his wife live on the adjacent property.

This has not been a happy tenancy. Each party had a long list of complaints and accusations about the other party. The landlord was very unhappy with the tenant's behaviour and the condition in which he kept his cabin.

The landlord described the pride he took in his establishment and the amount of work he does to maintain the place. On June 27 he and a long-term tenant, who also does work for the landlord, were working on the exterior of the cabins. They were taking off the storm windows in preparation for painting.

When the landlord and his helper got to the tenant's cabin and took off the storm window on the main living room window, which the landlord described as being quite large, they realized there was no interior window. The landlord and his employee said

they could see that the interior window had been broken since the start of the tenancy; the tenant testified there had never been an interior window.

The landlord knew the tenant had gone to the hospital the previous day for cancer treatment and that it would be few days before he returned.

After thinking carefully about what he should do the landlord decided that since it was the tenant's responsibility to fix the window or at least report the damage and he had done neither, and since he was properly engaged in the maintenance of his own property, he would continue with his project. He took the storm window away leaving the cabin without a main window. He also posted a 1 Month Notice to End Tenancy for Cause.

When the tenant returned a few days later he found that his personal possessions were all gone. He also found that the electricity was not working and the food in his refrigerator had spoiled. The tenant's brother and employer both testified about the condition of the tenant's unit upon his return from the hospital. Upon investigation the tenant's brother found that all the wires in the breaker box had been disconnected. He reconnected them and power was restored.

The landlord denied taking anything from the cabin or disconnecting the power.

The tenant and his employer put a piece of plywood over the window. The landlord thought it was unsightly and took it down. There was a physical altercation between the landlord, the tenant and the tenant's employer over whether the board could be re-installed. This was one of the occasions on which the police were called. As of the date of the hearing, the cabin window is still wide open to the elements.

The tenant provided a list of items he says are missing from his unit. This includes clothes, bedding, toiletries and groceries. No other particulars of the contents was provided.

The tenant has found a new place to live and has taken possession of it. He has not paid any rent for August. The tenant made it very clear that he does not want to continue this tenancy but is going to stay in the cabin until the landlord compensates him for the items that are missing.

The landlord's position is that the broken window is the tenant's responsibility and it is the tenant's responsibility to replace it, not his.

Analysis

- a. Does the landlord have grounds to end this tenancy?

Both parties want this tenancy to end and the tenant's continued occupation of the rental unit is merely a primitive method of debt collection. Based upon the parties' express desire to end this tenancy and the landlord's expressed desire to have this tenant off his property as soon as possible, I find that this tenancy ended on the effective date of the Notice to End Tenancy, July 31, 2013, and I grant the landlord an order of possession effective two days after service on the tenant.

- b. Is the tenant entitled to a monetary order and, if so, in what amount?

Section 32(1) of the *Residential Tenancy 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; and,
- having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

To be suitable for occupation a rental unit must have windows. Removal of the storm window was not immediately necessary for maintenance; it was only a primitive way of trying to force the tenant to move out without the trouble of applying to the Residential Tenancy Branch for an order of possession.

Whether there was an interior window at the start of this tenancy or not is irrelevant to the issue before me at this hearing. Even if the tenant had broken the interior window the proper procedure for a landlord is to fix the window, either during the tenancy or after the tenancy has ended, and claim against the tenant for the cost of the repair. The landlord had collected a security deposit and presumably had collected sufficient credit information from the tenant before renting to him to allow the landlord to enforce a monetary order if necessary.

It does not matter whether the landlord actually took the items out of the cabin and disconnected the electricity or not. His action is the reason why the tenant's cabin was left wide open for several days so that anyone could have access to it. The landlord is responsible for the consequences of his actions, which include compensating the tenant for the items lost while he was in the hospital.

It is not possible on the evidence before me to give an award for specific damages. After considering the moderate list submitted by the tenant, and bearing in mind that the value of the items is their value as used goods, not their replacement cost, I award the

tenant \$300.00 as general damages. As the tenant has also been successful on his application I also order that the landlord reimburse the tenant for the \$50.00 fee he paid to file this application. Pursuant to section 67 I grant the tenant a monetary order in the amount of \$350.00.

A word of warning for both parties:

- The tenant is reminded that as long as he remains in possession of the rental unit he remains responsible for the rent.
- The landlord is reminded of section 57(2) of the *Residential Tenancy Act* that states that the landlord must not take actual possession of the rental unit unless the landlord has a writ of possession issued under the *Supreme Court Rules*.
- After the tenancy has ended the landlord may claim against the tenant for any damages that may be proven at a hearing.
- Any claim against the security deposit must be made in compliance with section 38 of the *Residential Tenancy Act*.

Conclusion

- a. An order of possession effective two days after service on the tenant has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order in favour of the tenant in the amount of \$350.00 has been granted. If necessary, this order may be filed in the Small Claims 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: August 08, 2013

Residential Tenancy Branch

