



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, MND, MNR, MNDC, FF

Tenant: CNC, MNDC, OLC, ERP, RP, LRE, LAT, RR

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy; several orders to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her agent; and the tenant. The tenant had arranged for a witness/ to attend the hearing. This witness is an occupant of the dispute address. At the outset of the hearing I obtained the witness' contact information and asked him to leave until such time as we might call him for testimony. We did not call the witness.

I did advise the parties that I would review the evidence and testimony and if I felt there was a need to hear from the tenant's witness that I would reconvene the hearing. Upon this review, I find there is no need to bring in testimony from the tenant's witness.

At the outset of this hearing the landlord clarified that despite noting on her Application for Dispute Resolution that she was seeking a monetary order for, in part, unpaid rent there is no outstanding rent at the time of this hearing. I therefore amend the landlord's Application to exclude the matter of a monetary order for unpaid rent.

Likewise the tenant clarified that are currently no issues requiring repairs or emergency repairs. I amend the tenant's Application to exclude a request for repairs or emergency repairs.

The landlord testified that she had not received all of the tenant's evidence after I had indicated the tenant had provided 91 pages in evidence. The landlord submitted she had less than half that number of pages. The tenant testified that he served the landlord with the same package he provided to the Residential Tenancy Branch (RTB). He also stated that much of the package was evidence the landlord had provided in a previous hearing between the parties.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Based on the testimony of both parties I find it unlikely that a party to a dispute resolution proceeding would, after being involved in two hearings within the last month, exclude any evidence they intended to rely upon in an upcoming hearing to either the other party or the RTB. As such and in the absence of any evidence to support the landlord's assertion, I find the landlord was sufficiently served with the tenant's evidence package in full. As a result, I have considered the tenant's full package of evidence.

The landlord testified that she served her evidence to the tenant by posting it to the door of the rental unit on August 3, 2013.

Residential Tenancy Branch Rule of Procedure #3.4 states to the extent possible, the applicant must file copies of all available documents, photographs, video or audio evidence at the same time as the application is filed.

Section 3.5 states that copies of any documents, photographs, video or audio evidence that are not available to be filed with the application, but which the applicant intends to rely upon as evidence at the dispute resolution proceeding, must be received by the Residential Tenancy Branch and must be served on the respondent as soon as possible, and at least (5) days before the dispute resolution proceeding as those days are defined in the "Definitions" part of the Rules of Procedure.

The "Definitions" part states that the calculation of time expressed as "at least" a number of days, the first and last days must be excluded. As the landlord served her evidence on August 3, 2013 and the hearing was held on August 8, 2013 and by the definitions I must exclude August 3 and August 8 I find the landlord served the tenants with her evidence only 3 days prior to the hearing.

However, the tenant did not raise an objection to the use of the landlord's evidence or seek an adjournment. Therefore, I have considered all of the landlord's evidence in this decision, with one exception. While the landlord has provided substantial photographic evidence, all taken during the month of July 2013 and the 1 Month Notice to End Tenancy for Cause was issued on June 29, 2013 I have not considered this evidence, in particular, relating to the justification for issuing the Notice.

The parties also acknowledged that there had been previous hearings between them in the last couple of months, and that they were scheduled for another hearing on August 9, 2013 based on the landlord's second Application for Dispute Resolution seeking an early end to the tenancy without notice. With the agreement of both parties I advised the parties that I would consider decisions from the hearings already concluded and may be bound by findings and/or orders issued.

The first hearing was conducted on June 19, 2013 based on the landlord's Application for Dispute Resolution submitted to the Residential Tenancy Branch (RTB) on June 11, 2013 seeking an early end to the tenancy without notice. The decision, dated June 25, 2013, which followed this hearing, dismissed the landlord's Application.

The second hearing was convened twice, on June 27, 2013 and on July 17, 2013, based on the tenant's Application for Dispute Resolution submitted to the RTB on June 3, 2013 seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and a 1 Month Notice to End Tenancy for Cause; a monetary order for compensation for loss of quiet enjoyment; and an order to have the landlord comply with the *Act*, regulation or tenancy agreement.

In that decision, dated August 6, 2013 the arbitrator cancelled the notices to end tenancy but dismissed the tenant's claim for monetary compensation and for orders seeking to have the landlord comply with the *Act*, regulation or tenancy agreement. As the claim sought compensation for loss of quiet enjoyment was submitted in the tenant's Application of June 3, 2013 I find that any compensation for events prior to June 3, 2013 is considered *res judicata*.

Res judicata is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties.

I have considered, in this decision, the tenant's claim for compensation for events that have occurred since June 3, 2013, as there is no evidence before me that these events were considered in the August 6, 2013 decision.

In regard to the issues relating to the Notice to End Tenancy I advised the landlord at the outset of the hearing that because the parties had already dealt with the 1 Month Notice to End Tenancy for Cause that was issued on June 3, 2013 I would only consider events occurring between the time that Notice was issued and June 29, 2013, the date the subject Notice was issued.

Despite this both parties provided testimony in regards to events leading up to the two previous notices to end the tenancy and subsequent to the issuance of the subject Notice. I allowed this testimony as it may have some relevance if the tenant's behaviour is a continuation of items that had been previously identified as reasons to end the tenancy. I have considered all relevant testimony and evidence.

I also make note that both parties did attempt to come to a settlement agreement over these matters during the hearing but were unable to come to any settlement that both parties would accept.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for compensation for damage and repairs; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 47, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order to have the landlord comply with the tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; to authorize the tenant to change locks on the rental unit; to allow a rent reduction for services and facilities agreed upon but not provided. to a monetary order for compensation loss of quiet enjoyment; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 29, 31, 47, 67, 70, and 72 of the *Act*.

Background and Evidence

Through all of the evidence, testimony and previous decisions the parties agree the tenancy began on January 1, 2013 as a one year fixed term tenancy for the monthly rent of \$2,100.00 due on the 1st of each month.

The landlord submits that she does not have a copy of the tenancy agreement but that her agent used the standard Agreement found on the RTB website and it included an addendum detailing the restrictions to the use of the property. The tenant provided a copy of a tenancy agreement that indicates that there is an addendum included but he did not include a copy of the addendum.

The landlord submits the tenancy agreement allowed the tenant to rent only the house and the area immediately adjacent to the house; the tenant submits the tenancy includes the entire property with the exception of the barn that the landlord used to store her belongings while she was out of the country.

The parties agree the landlord had been out of the country attending school. The tenant's written submission indicates he was of the understanding the landlord would be attending school for the next few years.

The landlord submits that due to personal circumstances she had to return and while here she had secured an agreement to sell the property. However the landlord submits that the deal fell through but that the purchaser is still interested in the property. The landlord testified the sale was not contingent upon vacant possession of the property. The parties also agree that as of June 5, 2013 the landlord moved a trailer onto the property and has been living there ever since.

The tenant submits that he offered to end the tenancy early if the landlord compensated him in the amount of two month's rent and returned the security deposit and pet damage deposit for a total amount of \$6,300.00.

The tenant submits that he continues to make the offer to vacate the property but is now seeking compensation in the amount of \$8,300.00, due to additional losses he has suffered as a result of lost revenue for dealing with the disputes between the parties.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on June 29, 2013 with an effective vacancy date of August 31, 2013 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; the tenant has caused extraordinary damage to the unit or property; the tenant has not done required repairs of damage to the unit; and there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord testified she served this notice on June 29, 2013.

The landlord submits that as a result of altercations with the occupant (not the tenant) of the rental unit in which she submits she was threatened by the occupant the occupant has been issued an order to not have contact with the landlord. However, neither party identified in the hearing whether or not charges had been laid against the occupant.

The landlord submits that as a result of the occupants continued presence on the property she has been impeded in being able to manage the rental unit or complete any of the tasks required of a landlord to ensure the property is maintained. The landlord submits that she cannot even attend the property if she provides notice in accordance with the *Act* if the occupant is on the property. The landlord acknowledged that she has had her real estate agent act on her behalf but that it costs her money each time she does.

In addition the landlord submits that on June 15, 2013 the occupant (not the tenant) did not allow the landlord's real estate agent access to the property to conduct an open house despite being provided with appropriate notice.

In support of her position the landlord has provided:

- A copy of a handwritten letter from the landlord to the tenant dated June 8, 2013, advising him of a list of dates that the realtor would show the property which included June 15, 2013 as an open house date; and
- A copy of an email from her realtor in which he states: "On Saturday, June 15, 2013 at around 11:00 a.m. I was asked by my client, JP, to ask the tenant, BB, if I could go into the house to conduct an open house. He was already outside and in his truck when I asked if I could go inside. He replied that he had to leave but would be back some time later and I could arrange a time to go in on Sunday or

“next week”. I walked up to the door and tried it and it was locked and again asked if I could go inside but he said “No”. I left it at that.”

The landlord argues that as a result of these issues she is being significantly interfered with; that her lawful rights as a landlord are seriously jeopardized and the property is at significant risk because she cannot attend the property.

The landlord also submits that she provided the tenant with a list of repairs required and referred to the tenant's submission of this handwritten letter dated June 29, 2013, there is a notation that the list was served by posting in the door on July 1, 2013. The list of cleaning and repairs requires includes:

1. Dog feces and urine all over the carpet in the office with exterior door;
2. Dog urine in the adjacent room on both slate and hardwood;
3. Dog urine on corner in hallway & dog hair and urine around hot air duct (same location);
4. Dog feces and urine and hair in downstairs hallway all over the carpet;
5. Dog feces and urine and dirty clothes all over the floor in a downstairs bedroom all over the carpet;
6. Dog urine in the garage;
7. Dog feces all over the front & back yards;
8. Dog hair extraordinary amounts all over front driveway;
9. Garbage in and out of bags on balcony and back yard;
10. Meat wrappers on floor in office.

In addition the letter demands the garage door be fixed or replaced due to damage caused by the dogs; the interior stairs be repaired from damage caused by the dogs; black circular marks on the hardwood floors be repaired; the front and back yards be mowed. The landlord submits the tenant has not made any of these repairs or completed the cleaning or repairs.

The tenant submits that he has had the carpets professionally cleaned.

The landlord, in this letter, also notifies the tenant is in breach of a material term of the tenancy agreement by having 5 dogs on the property. She states in the letter that the tenant must only have 3 dogs and that none of them are to be kept in the house.

The landlord also provided a copy of a handwritten letter from her to the tenant dated June 4, 2013 advising the tenant that he is breach of their agreement by having his three dogs in the house and that he must discontinue this behaviour immediately.

The tenant submits that there was no agreement regarding keeping his dogs outside nor as to the number of dogs allowed.

The tenant seeks compensation from the landlord for the loss of quiet enjoyment because of the landlord's action of moving onto the property and as a result of the landlord's harassment in trying to end the tenancy.

Since the landlord attempted to end the tenancy earlier than the end of the fixed term due to the sale of the property the landlord has issued at least 2 Notices to End Tenancy which resulted in two separate hearings; has had two hearings to end the tenancy early and without notice (one was held the day after this hearing); and continues to harass the occupant and tenant on a regular basis.

The tenant submits that the landlord has reported the occupant to the Ministry of Children and Family Development in relation to his children; that the landlord has had her friends report the tenant to the Society for the Prevention of Cruelty to Animals regarding his dogs; the installation of a camera into the laundry room; and repeated issuance of Notices to End Tenancy and hearings attempting to end the tenancy.

The tenant seeks compensation in the amount of \$8,300.00 representing the equivalent of two month's rent; the return of the security and pet damage deposits; and for lost wages for having to deal with the Notices and hearings in regard to the landlord's attempts to end the tenancy.

The landlord seeks compensation for repairs she made to the riding ring in the amount of \$973.70. She submits that after the tenant was issued one of the notices to end tenancy he tore up the riding ring and it required extensive repairs. The landlord provided no documentary evidence of this damage or the cost of repairs.

The landlord also seeks compensation in the amount of \$100.00 for calling in a furnace repair person when the tenant told the landlord that the furnace wasn't working. The landlord submits the tenant reported that the furnace was not working and that they had called in a technician and found only that the oil tank was empty. The landlord provided no documentary evidence of the cost of this visit.

The tenant submits that the landlord had indicated the tank was a $\frac{1}{4}$ full at the start of the tenancy and this happened within only a couple of weeks of the start of the tenancy. The tenant submits that he was unaware the tank was empty.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
 - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

- iii. Put the landlord's property at significant risk;
- b) The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- c) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- d) The tenant
 - i. Has failed to comply with a material term, and
 - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

In relation to the landlord's assertion that she cannot perform her responsibilities as a landlord because the occupant has an order restricting his contact with the landlord I find, without actually seeing a copy of any orders, that it is the occupant that cannot be around the landlord.

As such, I find that if the landlord provides the tenant with a valid notice to enter the residential property that is in accordance with Section 29 of the *Act* it is up to the occupant to ensure that he is not present when the landlord enters the residential property. Failure for the occupant to comply is a matter outside of the jurisdiction of the *Act*.

I find that the landlord's determination that she cannot attend the residential property was her own misunderstanding and she cannot hold the tenant responsible for it, especially if she intends to rely upon it to end the tenancy.

In relation to the assertion that the occupant prevented the landlord's realtor from having an open house I concur with the findings in the decision dated June 25, 2013 where the arbitrator found that the occupant had been working cooperatively with the realtor.

While the landlord's handwritten notice dated June 8, 2013 does indicate the landlord had planned an open house on June 15, 2013 I find the landlord had failed to arrange for the open house. As a result, I find that since no open house had been planned the landlord failed to have a reasonable reason to enter the unit and the occupant did not significantly interfere with the landlord's dealings with the realtor.

In relation to the landlord's position that she provided the tenant with a list of cleaning and repairs that the tenant has failed to complete I note that the handwritten letter from the landlord to the tenant requests the cleaning and repairs was dated July 29, 2013 and from the notation that it was served to the tenant on July 1, 2013.

As the tenant had been provided with the list of cleaning and repairs after he was served the notice to end tenancy of June 29, 2013, I find the landlord cannot rely on the tenant's failure to complete the list, as he had not yet received it, to end the tenancy.

While the landlord has provided no photographic or other documentary evidence of the condition of the rental unit either before the start of the tenancy or prior to the issuance of the notice during the period of June 3, 2013 to June 29, 2013 and the tenant disputes the landlord's assertions in regard to any damage to the property, I find the landlord has failed to establish the tenant has caused any significant damage to the rental unit or property.

And finally, in relation to the landlord's position that the tenant has breached a material term of the tenancy agreement in having 5 dogs on the property and/or that they were not allowed to stay in the house, I find the landlord has failed to provide a copy of a tenancy agreement or any addendums that indicate that these were even terms of the tenancy agreement let alone material terms.

For the reasons noted above I find the landlord has failed to provide sufficient evidence to establish she has any cause to end this tenancy. I therefore dismiss the portion of the landlord's Application seeking an order of possession and grant the portion of the tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause issued on June 29, 2013.

When renting a single family dwelling the onus is on the landlord to clearly establish which part of the residential property, if any, is excluded from the tenancy agreement. On the basis of the undisputed testimony, I find that the tenant was not entitled to use the barn during the tenancy.

Although the landlord contends the addendum to the tenancy agreement limits the tenant's access to other areas of the residential property the landlord has failed to provide a copy of the addendum to corroborate that testimony

Further, I find, based on the balance of probabilities that is unlikely a landlord who was intending to be out of the country for an extended period of time would rent out only a portion of their property, with the exception of a barn they intended to use for storage.

For these reasons I find the landlord has failed to establish the tenancy agreement restricts the tenant's use of the property or limits the tenancy to only the house and yards immediately surrounding it.

As such, I order the landlord to immediately remove her trailer and provide the tenant with full access to and unimpeded use of the entire property with the exception of the barn. I also order that until such time as the landlord moves her trailer and her belongings, including any animals, off the property and the landlord has obtained an order from a Residential Tenancy Branch arbitrator confirming that she has done so, the tenant is not required to pay any rent beginning September 1, 2013.

In relation to the tenant's claim for compensation for harassment, I find that due to the landlord's occupation of a portion of the property since June 5, 2013 the tenant is entitled compensation, as would be consistent with my order above. In addition, I find

the landlord's repeated attempts to end the tenancy, including the use of hearings to attempt to end the tenancy without notice for minor and/or unsubstantiated causes, are frivolous.

I also find that these repeated attempts in such a short amount of time relate more to an ulterior motive on the landlord's part. Specifically, I find the landlord is attempting to end the tenancy to facilitate a sale of the property and not for legitimate cause.

Therefore, I order the tenant is entitled to compensation in the equivalent of 2 ½ months worth of rent for a total compensation of \$5,250.00.

From all of the evidence before me, I am satisfied the tenant has established there is a potential that the landlord may have or may in the future enter the rental unit without adequate notice or knowledge of the tenant.

I, therefore, authorize that the tenant to change the locks to the rental unit, pursuant to Section 70 of the *Act*. The tenant is not obligated to provide copies of the new keys to the landlord until the tenancy ends in accordance with the *Act*.

Further, I order that should the landlord seek to gain access to any part of the residential property (including the barn), at any time, she must provide notice of entry that complies with Section 29 of the *Act*.

As to the landlord's claim for compensation for damage to the riding ring, I find the landlord has failed to provide any evidence that there was any damage whatsoever to the riding ring or to establish the costs of any repairs. Further, as I have determined that the tenancy includes the riding ring, I find the tenant had until the end of the tenancy to make any required repairs. For these reasons, I dismiss this portion of the landlord's claim.

From the testimony of both parties, I accept the landlord called in a furnace service person in January 2013 and that it was determined the problem was that the tank was empty. However, I find the landlord has failed to establish how this action was a violation of the *Act*, regulation or tenancy agreement or the cost of the site visit by the service provider. I therefore dismiss this portion of the landlord's claim.

Conclusion

As the landlord was unsuccessful in her Application, I dismiss her claim to recover the filing fee paid by her for this hearing.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$5,350.00** comprised of \$5,250.00 compensation and the \$100.00 fee paid by the tenant for his application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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 13, 2013

Residential Tenancy Branch

