



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP RR PSF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel two notices to end tenancy, one for unpaid rent pursuant to section 46 and one for cause pursuant to section 47;
- b) For a monetary order for \$5,000 as compensation for loss of quiet enjoyment, loss of use of the basement and partial yard and other money owed to them; and
- c) To recover the filing fee for this application.

Service:

The Notices to End Tenancy are dated September 15 and 16, 2013 and the tenant confirmed they were served personally on her. The landlord confirmed that the Application for Dispute Resolution was served on him. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and/or sufficient cause to end the tenancy or has the tenant demonstrated that the notices should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they are entitled to compensation for loss of facilities, for loss of quiet enjoyment, for overpaid rent and for reimbursement of expenses incurred due to a flood?

Background and Evidence

Both parties with agents attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a lengthy, contentious hearing with the parties disputing the statements of each other and no documentary evidence

provided by the tenant to support her claims for monetary compensation. The undisputed evidence is that the tenancy commenced in June 2011, it is now a month to month tenancy, rent is \$1550 a month, payable on the 15th of the month and a security deposit of \$350 was paid in June 2011. The tenant contended that she paid an additional month's rent (\$1550) and paid \$775 in total for the security deposit. She claims she has a copy of a cheque for \$3500 which was cashed by the landlord at the commencement of the tenancy but which the landlord denies ever receiving; no copy of the cheque is in evidence.

The parties confirmed at the outset of the hearing that the tenant had provided a Notice to End her tenancy on October 15, 2013 and they agreed the landlord might receive an Order of Possession for that date. The tenant claims compensation of \$5000 as follows:

\$1550 for one month of overpaid rent

\$775 security deposit refund

\$775 for loss of use of the basement from Sept. 2 to October 15, 2013

\$300 for additional moving expenses for items in the basement to go to storage

\$800 to cover moving expenses as the harassment, hostility of the landlord is causing the tenant to have to relocate

\$200 for additional hydro used by the heaters and fans of the Restoration Company

\$200 for additional fees that will be incurred for hook ups of hydro etc. necessitated by the move.

In answer, the landlord states he received no overpaid rent and only \$350 in security deposit; he refers to the lease in evidence. He agrees that the tenant lost some use of the basement when the hot water tank leaked on September 2, 2013. However, he contends he had a new one installed immediately and had a company come in to remediate the basement area. He points out that any mould or other problems are largely caused by the tenant not mitigating the loss by having her items removed from the basement to allow proper remediation procedures. He agrees that the basement is about 50% of the area of the home and only 75% of the basement is living area.

The landlord states that he paid \$200 to a mover as agreed to move the tenant's items into storage and he paid for a storage locker. He said that any additional agreements which the tenant may have made with the mover were unknown by him, he has not received any receipts, none are in evidence and he is not responsible for the cost of these unproven claims. He denies any responsibility for the \$800 and \$200 in additional fees claimed by the tenant. He pointed out that the tenant has ended the tenancy, he is not causing her to relocate and he was prepared to remediate all damage and in fact, acted within one day to replace the hot water tank. He states he has not harassed the

tenant but has served her Notices to End Tenancy which is his legal right. He points out there is no documentary evidence of increased hydro costs and the dehumidifiers could be moved out tomorrow if the tenant finds it necessary.

Included with the landlord's evidence are two copies of Notices to End Tenancy, another Notice to end her tenancy given by the tenant effective October 15, 2013, some letters between the parties, authorization letters, and a letter from the landlord's insurer dated September 9, 2013, a bill from the storage company which both parties agreed the landlord was paying and photographs..

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As the tenant has served a notice to end her tenancy on October 15, 2013 and has agreed the landlord may have an Order of Possession for that date, the Notices to End Tenancy no longer are required to be set aside. I dismiss this portion of the tenant's claim and find the landlord is entitled to an Order of Possession effective October 15, 2013.

In respect to the compensation claim, the onus is on the tenant as applicant to prove on a balance of probabilities her claim. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Although the tenant claimed she paid double the monthly rent at the outset of the tenancy and also paid the full \$775 as security deposit, I find insufficient evidence to support her claim. She has not submitted the copy of the cancelled cheque to which she referred to our office or to the landlord and the landlord denies ever receiving such payment. I find the evidence submitted of the lease supports the landlord's statement that he received only \$350 security deposit and no extra month's rent. The tenant's agent said that the evidence may have been submitted for a prior hearing under file #808493. This was an Application by the tenant heard on July 2, 2013 to cancel a Notice to End Tenancy for cause and the Notice was successfully cancelled. I find it

inconsistent with the tenant's statements today that there is no mention of an extra payment of rent in that decision. I dismiss the claim of the tenant for compensation for an overpayment of rent as there is insufficient evidence to support her claim. Her agent said they will have the cheque investigated for fraud and they are, of course, legally free to pursue their other remedies.

I find the undisputed evidence is that the tenant did lose the use of the basement from September 2, 2013 to October 15, 2013. Although I find this was not through fault of the landlord, I find she suffered a loss of use of the facility which may be compensated by a rebate of paid or owed rent. I find the living area of the basement comprised about 37.5% of the home (75% of 50%) and the remaining 12.5% was storage. I find the rent for the home is about \$1550 and the tenant lost use for one month and 13 days (Sept. 2-15) of 37.5%. I find daily rent for 37.5% of the home is \$19.37 ($\51.66 day ($\$1550/30$) $\times 37.5\%$) so I find the tenant entitled to a rent rebate of \$833 for partial loss of use for 43 days. As the tenant has only paid one half of September's rent, or \$775, I find she is entitled to a rebate of \$58 on the amount she has paid.

I find insufficient evidence to support her claim for \$300 for additional moving expenses for items in the basement to go to storage. I find the letter signed by both parties on September 11, 2013 obliges the landlord to arrange for a mover and cover storage expenses and he has done that. The letter states, "We have arranged a mover to help you, with your cooperation your belongings will be moved into a storage facility at our cost. This will be for a set period of two months". I find the landlord's evidence credible and prefer it to the evidence of the tenant that he paid \$200 for estimated moving costs and he does not have knowledge of any other arrangements or payments between the tenant and the mover. His evidence was supported by the tenant's statement that the landlord paid \$200 but the mover came back and charged her additional money for additional loads for which she has provided no receipts. I dismiss this portion of the tenant's claim.

I find the weight of the evidence is that the landlord fulfilled his obligations as a landlord and had the hot water tank replaced promptly and remediation commenced. I find the tenant chose to move and was not forced to relocate; she has given a one month notice to end her tenancy on October 15, 2013. While the tenant claims harassment citing examples of Notices to End Tenancy and photographs taken without her permission to enter, I find that the landlord was exercising his legal rights under the Act to serve Notices under section 47 for cause and 46 for unpaid rent. While the section 47 Notice was set aside in the previous hearing, there was no finding of harassment or wrongdoing by the landlord and I find no evidence of such conduct in this hearing. I find also that he did not enter the home illegally. I find he has a right to enter the home in an

emergency under section 29(1)(f) and the evidence is that there was such an emergency in a flood and he entered to assess the damage and take photographs for insurance and other purposes. Therefore I find the tenant not entitled to recover \$800 for moving expenses. I dismiss this portion of the tenant's claim.

While it may be likely that additional hydro is being used to remediate the flood problem, I find the tenant has provided insufficient evidence to support a \$200 claim for the use by the heaters and fans of the Restoration Company. She said this is an ongoing cost and she has no invoices yet. Therefore, I dismiss this portion of the tenant's claim and give her leave to reapply, if necessary, when she has the necessary invoices from the hydro company that would support such a claim.

I find the tenancy is not at an end until October 15, 2013 and it is premature to order a refund of the tenant's security deposit according to section 38 of the Act. I dismiss this portion of the tenant's claim and give her leave to reapply.

Conclusion:

I find the landlord entitled to an Order of Possession effective October 15, 2013 as agreed above.

I find the tenant entitled to recover a partial rebate of rent as calculated below. I find she is entitled to recover her filing fee as her application has some merit.

Calculation of Monetary Order:

Rebate of rent (37.5% Of 43 days as calculated above)	833.00
Less amount already rebated in Sept. rent	-775.00
Filing fee for this application	50.00
Total monetary order to tenant	108.00

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: October 01, 2013

Residential Tenancy Branch

