



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Caird Holdings Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNC, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; to cancel a Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the parties advised that the tenant is no longer residing in the rental unit, and therefore, the tenant withdraws all aspects of her claim with the exception of the claim for a Monetary Order.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on October 01, 2010 for a fixed term of one year which then reverted to a month to month tenancy. Rent for this unit was \$1700.00 and the tenant was to pay utilities. The rent was later increased to \$1760.00 on November 30, 2011 which included \$60.00 for Hydro.

The tenant testifies that after receiving the One Month Notice to End Tenancy the tenant decided to vacate the rental unit in accordance with the effective date of that Notice. The tenant testifies she intends to vacate the unit on November 30, 2013.

The tenant testifies that the landlord was providing the tenant with Hydro bills which the tenant paid from December 01, 2012. The tenant testifies that the tenancy agreement was amended in November, 2011 to show that the rent increased by \$60.00 per month which then covered Hydro. The tenant testifies that as she could not remember this she continued to pay the Hydro costs from December, 2012. The total amount paid for that period until the end of the tenancy was \$1,913.20. The tenant has provided a copy of the amended tenancy agreement and the Hydro bills. The tenant seeks to recover this amount from the landlord.

The tenant testifies that she also seeks compensation for all the stress of having to deal with the landlord after receiving the One Month Notice. The tenant testifies it was very stressful finding a new place to live, filing her application and gathering her evidence. The tenant seeks an undisclosed amount for this stress.

The tenant testifies that as she was forced to move out because the landlord served the One Month Notice to the tenant the tenant seeks to recover \$1,500.00 compensation for her moving costs. The tenant also seeks to recover the \$50.00 filing fee.

The landlord agrees that the tenancy agreement was amended to include Hydro from November 30, 2011 and agrees that the tenant has paid Hydro from December 01, 2012 of \$1,913.20.

The landlord disputes the tenant's claim for stress as the landlord testifies that this stress was self inflicted by the tenant. The landlord testifies that in early July, 2013 the tenant put four 48 or 53 foot trailers on the property in contravention of the City bylaws. The bylaw officer asked the tenant to remove them and extra time to do so was granted to September 30, 2013. Another extension of time was granted to October 15, 2013. After this time as the tenant had still not removed the trailers the landlord had to serve the tenant with the One Month Notice to show the City that the landlord was being proactive about the trailers and the tenant's contravention of the bylaws. The landlord testifies that this was to prevent the City fining the landlord \$150.00 a day or removing the trailers. Had the tenant removed the trailers when asked to by the City then the tenancy would not have been terminated.

The tenant testifies that she did not put the trailers on the property until August, 2013. The landlord said one trailer had to be removed straight away and the tenant would then have to work with the City. The tenant agrees it was her fault that the trailers were at the property but the tenant was dealing with the City about this matter. On October 15, 2013 the tenant obtained another extension from the city for a few more days but the City did not inform the landlord of this and so the landlord issued the Notice to End Tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover the Hydro paid from December

01, 2012. The tenancy agreement has clearly been amended to show that electricity is included in the rent and therefore the landlord was in error providing these Hydro bills to the tenant and taking payment for these bills. It is my decision therefore that the tenant has overpaid the Hydro for this period and has established a claim to recover the Hydro paid from the landlord. A Monetary Order has been issued to the tenant for **\$1,913.20** pursuant to s. 67 of the Act.

With regard to the tenants claim for compensation for the stress in dealing with the One Month Notice and finding alternative accommodation; the landlord is entitled to serve as many notices on a tenant if the landlord feels the tenant is in breach of the *Act*. I refer the parties to a case held in Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenant's remedy would be to dispute the notice ending the tenancy once given. Consequently in this matter I find the landlord issued a One Month Notice as the tenant was in contravention of the Cy bylaws and therefore the tenant's application for compensation due to the stress of dealing with that Notice and finding alternative accommodation is dismissed.

With regard to the tenant's application for moving costs of \$1,500.00; the tenant did file an application to cancel the One Month Notice to End Tenancy for cause. However, the tenant did not wait for the hearing to take place but instead found alternative accommodation prior to the hearing and stated she was moving from the rental unit on November 30, 2013. The tenant therefore decided to move rather than proceed with her application to cancel the Notice. Consequently, the tenant is not entitled to recover any costs associated with the move and this section of the tenant's application is dismissed.

As the tenant has been partially successful with her claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,963.20**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply

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: December 02, 2013

Residential Tenancy Branch

