



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CPR, CNC, MNDC, OLC, RPP, LRE, LAT, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* to set aside notices to end tenancy for non payment of rent and for cause and for a monetary order for compensation. The tenant also applied for an order directing the landlord to comply with the *Act* and return the tenant's personal property. The tenant applied for authorization to change the locks and to suspend or set conditions on the landlord's right to enter the rental unit. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlord acknowledged receipt of evidence submitted by the tenant but admitted that she had not provided a copy of her evidence to the tenant. Accordingly, the landlord's evidence was not considered in the making of this decision. Both parties gave affirmed testimony.

Issues to be decided

Does the landlord have reason to end the tenancy? Does the landlord have the tenant's property in her possession? Is the tenant entitled to the remedies that she has applied for? Did the tenant pay a security deposit?

Background and Evidence

The tenancy started on June 15, 2013. The rental unit is a three bedroom suite located in the basement of the house. The landlord lives upstairs. The rent is \$975.00 payable on the first of the month. There is no written tenancy agreement.

The tenant testified about the start of tenancy as follows:

On June 03, 2013, around 5:30pm the tenant viewed the rental unit and decided to rent it. The landlord indicated to her that she would need to put a deposit of \$500.00 as soon as possible because there were other parties interested in renting the unit.

The tenant provided the landlord with \$100.00 in cash and later returned with the balance of \$400.00. The landlord did not provide a receipt. The tenant moved in on June 15 and paid prorated rent for June in cash. The tenant paid all subsequent rents by cheques dated the first of each month.

The landlord argued that the tenant did not pay any security deposit and even though her rent cheques were dated for the first of the month, they were usually handed over on the third or fourth of each month.

On May 26, 2014 the tenant made this application and amended it on June 03, 2014 to include her dispute of the notices received on May 29 (for cause) and June 04 (for non payment of rent).

The tenant testified that she attempted to give the landlord a rent cheque for June in person, but the landlord would not open the door in response to her knock. The tenant contacted the Residential Tenancy Branch Office and was directed to place the cheque in the landlord's mailbox, which she did on June 05, 2014.

Since the tenant paid rent within the legislated five day time frame, the notice to end tenancy for non payment of rent is set aside.

The reasons for the notice to end tenancy for cause are as follows:

- Tenant is repeatedly late paying rent
- Tenant allowed an unreasonable number of occupants in the unit
- Security deposit was not paid within 30 days as required by the tenancy agreement.

The landlord did not provide any evidence to support the tenant's late payment of rent and the tenant filed copies of her cashed rental cheques which are dated the first of each month and cashed on various dates.

The tenant stated that she has one visitor who does not spend the night in the rental unit. The landlord agreed that the tenant has one regular visitor but added that the visitor spends nights in the unit on numerous occasions.

During the above discussion, the parties came to an agreement. The tenant agreed to move out on or before July 31, 2014. The tenant also agreed to pay rent up to the last day of tenancy. It was explained to both parties that if the tenant moves out on July 15 or any other day in July, the tenant will pay rent up to July 15 or any other day in July. The tenant will not be required to give 30 day notice to end the tenancy.

Since the tenancy is ending, portions of the tenant's application are no longer relevant and accordingly dismissed. These portions include an order directing the landlord to comply with the *Act*, authority to change locks and set conditions on the landlord's right to enter the rental unit.

Regarding the tenant's claim for compensation for items damaged by the landlord, I find that the landlord removed the tenant's items from the shed. The landlord agreed that she had removed a three way mirror but denied other allegations. The tenant stated that the landlord left the mirror outside in the rain and it got damaged. The tenant filed a photograph to support her testimony. The tenant also filed proof of her purchase of the mirror in the amount of \$3,000.00 and a list of other items that she alleges were damaged by the landlord. The tenant also alleges that the landlord took her jewellery while the tenant was away from the unit. The tenant is seeking compensation in the amount of \$5,000.00.

Analysis:

Based on the sworn testimony of both parties, I find that the parties mutually agreed to end the tenancy on or before July 31, 2014. The landlord did not make a request for an order of possession. The tenant agreed to pay rent up to the last day of tenancy. Based on this agreement, I find that the tenant is also not required to give the landlord 30 day notice to end the tenancy.

Also based on the sworn testimony of both parties, I prefer the tenant's testimony regarding the payment of the security deposit. I find on a balance of probabilities that it is more likely than not that the tenant paid \$500.00 as a security deposit on June 03, 2014 and therefore, at the end of tenancy, the landlord must return the deposit in accordance with s.38 of the *Residential Tenancy Act*

The landlord agreed that she had removed the three way mirror and returned it to the shed on June 05, 2014. The tenant filed photographs of damage that occurred to the mirror when it was exposed to the elements. The tenant purchased the mirror second hand. The tenant did not file sufficient evidence to prove that the landlord caused damage to her other listed items and the landlord denies having caused damage to the tenant's possessions. The tenant also did not have sufficient evidence to substantiate her allegation that the landlord took her jewellery.

Based on the above, I find that the landlord did remove the tenant's three way mirror from the shed, which resulted in damage to it. It is not likely that the tenant placed the mirror in a location that was unsheltered from the elements. Therefore I find that the landlord is liable for the damage to the mirror.

The tenant has not proven that the landlord is responsible for the damage or loss of her other personal belongings. I must now determine the amount that the tenant is entitled to for damage to the mirror.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right

Based on the testimony of both parties, the documentary evidence of the tenant and the photographs that depict the size of the mirror and the damage to it, I find it appropriate to award the tenant \$500.00 towards the damage caused by the landlord. Since the tenant has proven her case she is also entitled to the recovery of the filing fee of \$50.00.

Overall the tenant has established an entitlement of \$550.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

1. The tenant will move out on or before July 31, 2014.
2. The tenant will pay rent up to the last day of tenancy.
3. I grant the tenant a monetary order of **\$550.00**.
4. The landlord will return the security deposit of \$500 in accordance with s. 38 of the *Residential Tenancy Act*

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 13, 2014

Residential Tenancy Branch

