



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, ERP, PSF, LRE, LAT, FF

Introduction

This hearing was scheduled to deal with a tenant's amended application to: cancel a 1 Month Notice to End Tenancy for Cause; 10 Day Notices to End Tenancy for Unpaid Rent or Utilities; for orders for emergency repairs, services or facilities; to suspend the landlord's right to enter the rental unit; and, authorization for the tenant to change the locks. The landlord did not appear and was not represented at the hearing.

The tenant sent the original Application for Dispute Resolution to the landlord on July 25, 2014 via registered mail using the landlord's service address as it appears on the tenancy agreement and on the 10 Day Notice issued on July 21, 2014. The tenant provided the registered mail receipt, including tracking number, as proof of service. The registered mail was returned as unclaimed. The service address used by the landlord is the rental unit address. The tenant explained that the landlord does not reside at the rental unit address but that is the only address the landlord has provided to him.

The tenant received two more Notices to End Tenancy on September 5, 2014 that were signed by an agent for the landlord and a different service address was provided on those Notices. The tenant sent the amended Application for Dispute Resolution to the landlord at the service address that appears on the September 5, 2014 Notices to End Tenancy. The tenant provided a registered mail tracking number as proof of service and a search of the tracking number showed that the landlord's agent picked up the registered mail on September 18, 2014.

I was satisfied the tenant served the landlord with notification of this proceeding in a manner that complies with the Act and I continued to hear from tenant without the landlord present.

At the outset of the hearing, the tenant stated that he will be vacating the rental unit in October 2014 as he has been served with the documents by the landlord's bank indicating the house is going through foreclosure proceedings and because the landlord

has removed services and harassed the tenant. Although the tenant does not agree with the reasons indicated on the 1 Month Notice he will accept the end of tenancy and will vacate the rental unit in October 2014. As such, the tenant withdrew his request to cancel the 1 Month Notice; as well as his requests for repairs and authorization to change the locks.

Issue(s) to be Decided

1. Should the 10 Day Notices to End Tenancy be upheld or cancelled?
2. Does the tenant owe the rent and utilities as indicated on the 10 Day Notices?
3. Should the landlord be required to provide services or facilities to the tenant or reduce rent?
4. Is it necessary to suspend or set conditions upon the landlord's right to enter the rental unit?

Background and Evidence

The tenancy commenced August 1, 2013 and the tenant is required to pay rent of \$2,150.00 on the 1st day of every month. The tenancy agreement provides that rent includes electricity and furniture, including a piano, among other things.

During the tenancy, the landlord requested the tenant pay him money for hydro in order to keep the hydro connected, which the tenant did. The tenant subsequently stopped paying the landlord for hydro because the tenancy agreement provides that hydro is included in rent. The tenant testified that in April 2014 the hydro was disconnected for seven days. The tenant suffered a loss of food and the landlord agreed to compensate the tenant \$500.00 as a result. The tenant deducted \$500.00 from May's rent with the landlord's agreement at that time.

In July 2014 the tenant came home to find the landlord inside the rental unit and preparing to remove many furnishings, including the piano. The two got into an argument and the tenant told the landlord to leave the premises.

Approximately a week later, the tenant was served with two Notices:

1. a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities indicating the tenant owed \$500.00 in rent for May 2014 and \$1,496.60 in utilities that were demanded in writing on July 21, 2014.

2. A Notice Terminating or Restricting a Service or Facility indicating the landlord would remove several furnishings, including the piano, on July 21, 2014 and the landlord would reduce the rent by \$0.

The above Notices were included in the tenant's original Application for Dispute Resolution filed on July 24, 2014.

The landlord returned to the property at a later date and removed the furnishings. The tenant explained that loss of the piano was significant as his wife is a concert pianist and the use of a piano was a significant factor in agreeing to rent this property.

On September 3, 2014 the landlord issued another 10 Day Notice indicating the same information contained on the 10 Day Notice issued on July 21, 2014. The tenant filed an amended Application for Dispute Resolution on September 4, 2014 to include the September 3, 2014 10 Day Notice.

On September 5, 2014 an agent for the landlord issued two more Notices to the tenant:

1. A 10 Day Notice to End Tenancy indicating rent of \$2,600.00 was outstanding and \$1,496.60 in utilities were outstanding.
2. A 1 Month Notice to End Tenancy for Cause with an effective date of October 15, 2014 that was changed to read October 31, 2014.

The tenant filed to amend the Application for Dispute Resolution again on September 8, 2014 to include the September 5, 2014 Notices.

The tenant submitted that the rent for September 2014 has been paid and he suspects the balance of \$2,600.00 included the \$500.00 indicated on the 10 Day Notices previously issued to him.

The tenant is of the position that he does not owe \$500.00 in rent because he and the landlord agreed to that he may deduct that amount from rent for May 2014 as compensation for loss of hydro and the loss of food that resulted from the hydro disconnection.

The tenant is of the position he does not owe the landlord any monies for hydro since the tenancy agreement provides that it is included in the monthly rent. Rather, the tenant is of the position the landlord actually owes him for money he paid to the landlord for hydro during the tenancy. The tenant had not included a monetary claim for recovery

of the hydro he paid to the landlord or provide documentary evidence to show how much he paid for such. The tenant was informed of his right to pursue such a claim by filing another Application for Dispute Resolution.

The tenant seeks cancellation of the 10 Day Notices issued to him in July and September 2014 and a finding that he does not owe rent or utilities to the landlord.

With respect to the landlord removing furnishings from the rental unit, and in particular the piano, the tenant is of the position the landlord did not have the legal right to removal of those items. Since the tenancy is about to end it is unlikely that an order for return of those items will be effective thus the tenant requested authorization to reduce rent. I did not further consider a reduction for future rent payable as the tenancy is about to end and because the tenant had not requested a rent reduction in his Application for Dispute Resolution. Nor, did I consider a monetary award as the tenant had not included a specific claim for compensation in his Application for Dispute Resolution. The tenant was informed of his right to make a separate Application for Dispute Resolution to seek monetary compensation for loss of services or facilities.

Although the tenant withdrew his request for authorization to change the locks, the tenant requested that the landlord be ordered to comply with the Act by giving the tenant 24 hour written notice before entering the rental unit again.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, that the tenancy should end for the reason(s) indicated on the Notice.

Since the landlord did not appear at the hearing to refute the tenant's assertions that \$500.00 was a permitted deduction from rent as compensation for loss of hydro and food spoilage; the tenant's submissions that rent was paid for September 2014; and, the evidence that electricity is included in rent, I cancel all three of the 10 Day Notices issued to the tenant. Further, I find the tenant does not owe the landlord \$500.00 in rent that was deducted from rent in May 2014, or rent for September 2014, and the tenant does not owe the landlord for hydro since it is included in rent pursuant to the terms of tenancy. Accordingly, I order the landlord to cease issuing 10 Day Notices for unpaid rent related to May 2014 or September 2014 or for hydro.

Under the Act, a landlord has a restricted right to enter the rental unit. Meaning, the landlord may only enter in certain circumstances, as provided under section 29 of the Act. Based upon the undisputed evidence before me, I am satisfied the landlord

entered the unit unlawfully in July 2014. As such, I order the landlord to give the tenant at least 24 hours of advance notice, in writing, prior to entering the rental unit again in a manner that complies with section 29 of the Act.

Below, I have reproduced the portion of section 29 that provides for a landlord giving a tenant at least 24 hours of written notice before entering the rental unit:

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Finally, with respect to termination of services and facilities, I find the landlord is in breach of the Act. The Act permits a landlord to terminate services and facilities, provided they are not essential to the tenant's use of the rental unit as living accommodation or a material term of the tenancy agreement, by giving the tenant at least one month of prior notice and a rent reduction for the equivalent reduction in value of the tenancy. Based upon the Notice of Termination presented to me, I find the landlord did not give the tenant one month of prior notice. Further, the furnishings and piano are included in rent, as indicated on the tenancy agreement, and I find that to remove such items would require a rent reduction. Since the tenancy is about to end, and the items are unlikely to be returned before the tenant vacates, I order the landlord to compensate the tenant the equivalent of a reduction in value of the tenancy agreement from the date the items were removed from the rental unit. Should the landlord fail to do so, the tenant is at liberty to file another Application for Dispute Resolution to seek a Monetary Order for the loss of the services and facilities.

Having found the tenant's application to be with merit, I award the tenant recovery of the filing fee. I provide the tenant with a Monetary Order in the amount of \$50.00. In satisfaction of this Monetary Order the tenant may withhold \$50.00 from rent otherwise payable to the landlord.

Conclusion

The 10 Day Notices to End Tenancy for Unpaid Rent and Utilities have been cancelled. I have made a finding that the tenant does not owe the landlord rent that was deducted

in May 2014; does not owe rent for September 2014; and does not owe the landlord for hydro. The landlord must not issue any more 10 Day Notices for unpaid rent related to these amounts.

The tenant has accepted the end of this tenancy in October 2014 and he withdrew his request to cancel the 1 Month Notice.

The landlord is ordered to give the tenant 24 hour written notice before entering the rental unit again, in a manner that complies with section 29 of the Act.

The landlord must compensate the tenant for loss of services and facilities removed from the rental unit and failure to do so shall entitle the tenant to file another Application for Dispute Resolution to seek monetary compensation from the landlord.

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 2, 2014

Residential Tenancy Branch

