



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MT, CNL, CNR, MNDC, O

Landlord's application: OPR, MNR, FF

Introduction

This hearing was scheduled to deal with cross applications. The tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and a 10 Day notice to End Tenancy for Unpaid Rent or utilities; as well, as monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for an Order of Possession and a Monetary Order for unpaid rent or utilities.

Preliminary and Procedural Matters

An advocate for the tenant appeared for the proceeding and he stated that he had anticipated that the tenant would be joining the hearing; however, the tenant did not call into the hearing or attend the advocate's office during the 50 minute hearing. The landlord confirmed that she received the tenant's Application for Dispute Resolution and I did give consideration to the tenant's application despite her failure to attend. The parties were informed of the tenant's right to file an Application for Review. Consideration should the tenant provide evidence she could not attend today's hearing due to circumstances beyond her control that were not anticipated.

The landlord testified that she sent her Application for Dispute Resolution to the tenant via registered mail at the end of September 2014. The tenant's advocate confirmed that he had a copy of the landlord's Application for Dispute Resolution in his possession. I was satisfied the tenant was served with the landlord's Application. I continued to hear from the landlord and gave the tenant's advocate the opportunity to respond.

During the hearing the landlord indicated that she amended her Application to include loss of rent for October 2014 and November 2014; however, she was unable to provide specific information as to when she amended her Application or served it upon the

tenant. As the landlord testified that the tenant is still residing in the rental unit I permitted the landlord to amend her application to include loss of rent for October 2014 and the first week of November 2014 to reflect the tenant's occupation of the rental unit. Should the landlord suffer further loss of rent after the first week of November 2014 she is at liberty to seek recovery of such loss by way of another Application.

Although the tenant requested cancellation of a 2 Month Notice to End Tenancy neither party provided evidence that one had been served upon the tenant. Rather, a handwritten letter was issued to the tenant by the landlord on June 27, 2014 indicating the landlord wished the tenant vacate the rental unit by September 1, 2014. All Notices to End Tenancy served upon a tenant must be in the approved form and I found this letter does not comply with the Act and was of no force or effect upon the tenancy.

Therefore, I was satisfied that a 2 Month Notice to End Tenancy had not been served upon the tenant and it was unnecessary to further consider whether one should be upheld or cancelled.

The tenant also indicated on her Application for Dispute Resolution that she needed more time to file this Application to dispute a Notice to End Tenancy received on September 4, 2014. I determined that the tenant received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 4, 2014 meaning the tenant was required to file this Application within five days, or by September 9, 2014, to dispute the 10 Day Notice. The Rules of Procedure provide that an Application is considered to have been made when the filing fee has been paid or the Application for Fee Waiver submitted. In this case, the tenant completed the Application for Fee Waiver on September 9, 2014 although the tenant's Application for Fee Waiver and Application for Dispute Resolution were not processed until September 10, 2014. In these circumstances, I accept that the tenant had submitted her documentation on September 9, 2014, which is within the 5 days she had to make her Application for Dispute Resolution to dispute the 10 Day Notice. Therefore, I considered the 10 Day Notice to be in dispute and that it was unnecessary to consider whether an extension of time was warranted.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities be upheld or cancelled?
2. Is the landlord entitled to recover unpaid and/or loss of rent from the tenant?
3. Is the tenant entitled to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenant paid a security deposit of \$300.00 for a tenancy set to commence May 1, 2014. The tenancy agreement provides that the tenant was to pay rent of \$730.00 on the 1st day of every month. The tenancy agreement provides that utilities, except electricity, are included in rent; however, the landlord testified that electricity was to be provided to the tenant as part of the agreement to pay \$730.00 per month. The tenant was given receipts for payment of the security deposit and rent for the months of May 2014, June 2014 and July 2014.

On July 29, 2014 a social worker wrote a letter to the landlord on behalf of the tenant indicating the tenant was experiencing financial difficulties and that rent for August 2014 would not be paid when due. The social worker indicated she was working with the tenant to resolve issues with her pension and that this issue would be resolved soon.

On August 10, 2014 the landlord issued a letter to the tenant to notify the tenant that payment of rent and utilities for August must be paid in full by August 12, 2014 or the power would be shut off and the tenant would have to vacate by midnight. The landlord acknowledged that she shut off the electricity to the rental unit for four days and then turned it back on once she learned it was illegal for her to do that.

On August 12, 2014 a social worker wrote a letter to the landlord on the tenant's behalf to inform the landlord that her actions were not compliant with the Residential Tenancy Act.

On September 4, 2014 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the Notice). The Notice has a stated effective date of September 13, 2014 and indicates rent of \$1,300.00 was outstanding and utilities of \$160.00 were demanded on September 1, 2014.

The landlord explained that a total of \$1,460.00 was outstanding as of September 1, 2014 but that she had separated the total amount into a rent component and a utility component on the 10 Day Notice.

The landlord testified that the tenant did not pay the outstanding rent for August or September 2014 and has not paid any monies for occupancy for the months of October or November 2014 yet the tenant continues to reside in the rental unit.

The tenant's advocate questioned whether rent included electricity and the landlord confirmed that it does.

The tenant's advocate could offer no evidence to suggest the tenant paid the outstanding rent for August 2014 or September 2014 or paid any other monies toward occupancy for the following months.

The tenant's reasons for disputing the 10 Day Notice, as indicated in her details of dispute, were that the landlord terminated the electricity and demanded payment of utilities.

The landlord requested an Order of Possession effective as soon as possible. The tenant's advocate requested an Order of Possession effective November 30, 2014.

The tenant's advocate submitted that the tenancy has been difficult due to the landlord's violations of the Act. The landlord acknowledged she is unaware of many requirements of the Act as this was the first time she was a landlord.

By way of the details of dispute, the tenant indicated the landlord's violation of the Act pertained to termination of the electricity. By way of her Monetary Order worksheet, the tenant requested monetary compensation for the following: \$300.00 for groceries purchased from Wal-Mart; \$8.00 for a flash light purchased from Wal-Mart; and one month's rent for an unspecified reason. The tenant did not provide copies of receipts or other documentary or photographic evidence in support of the amounts claimed.

The tenant's advocate suggested the tenant be compensated the equivalent of one month of rent as the landlord intends to occupy the rental unit. The landlord acknowledged that she does intend to move into the rental unit.

Analysis

Upon consideration of everything presented to me, I provide the following reasons and findings with respect to each of the Applications before me.

Section 26 of the Act provides that a tenant must pay rent when due, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right to withhold rent. The Act provides for very limited and specific circumstances when a tenant has a legal right to withhold rent. Those circumstances are where: the tenant has overpaid rent; the tenant has overpaid the security deposit or pet damage deposit; the tenant has made emergency repairs as defined under section 33 of the Act; the landlord agreed to deductions from rent; or, the tenant has the prior authorization of an Arbitrator to make deductions from rent.

Where a tenant files to dispute a 10 Day Notice the tenant must be prepared to establish that the tenant either paid the rent or had a legal right to withhold rent. In this case, the tenant did not present any evidence to suggest she paid the outstanding rent.

Although the landlord terminated the electricity for some days in the month of August 2014, and this is clearly a violation of the Act, that violation does not in itself give the tenant the right to withhold rent. Rather, the tenant's remedy is to file an Application for Dispute Resolution to obtain an Arbitrator's authorization to make a deduction from rent before doing so.

The 10 Day Notice does indicate that utilities of \$160.00 were owed to the landlord despite the rent being inclusive of utilities; however, since the landlord also reduced the amount of outstanding rent by \$160.00, I find the landlord did not request any monies from the tenant in excess of two month's of rent which was outstanding. Therefore, I am satisfied that separating the total of \$1,460.00 into components of \$1,300.00 for rent and \$160.00 for utilities was not prejudicial to the tenant and I amend the Notice pursuant to section 68(1) of the Act. Section 68(1) provides as follows:

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Finally, the effective date on the Notice should have read September 14, 2014 and it automatically changes to comply, pursuant to section 53 of the Act.

Having been satisfied the tenant owed the landlord a total of \$1,460.00 as of September 1, 2014 and the tenant did not present a legal basis for withholding rent I uphold the Notice, as amended, and find this tenancy ended on September 14, 2014. Since the tenancy has ended and the tenant continues to occupy the rental unit I grant the landlord's request for an Order of Possession. Since the tenant has occupied the rental unit for several months without paying rent I provide the landlord an Order of Possession effective two days after service upon the tenant.

I find the landlord entitled to recover unpaid rent of \$1,460.00 from the tenant for the months of August 2014 and September 2014 and I award the landlord loss of rent for the period of October 1 – November 7, 2014 to reflect the tenant's continued occupation of the rental unit. The landlord is further awarded recovery of the filing fee paid for her Application.

I reject the advocate's position that the tenant is entitled to compensation equivalent to one month of rent because the landlord intends to move into the rental unit. As explained to the parties during the hearing, tenant's compensation for landlord's use of property is applicable where the landlord ends the tenancy by serving the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord did not serve such a notice upon the tenant and the tenancy came to an end because the tenant failed to pay rent.

With respect to the tenant's request for monetary compensation, I find she has established an entitlement to compensation due to the landlord terminating the electricity. Although the tenant submitted on her Application that she was without electricity from August 13 to August 20, 2014 in her absence at the hearing and in the absence of other evidence to corroborate her position, I accepted the landlord's testimony at the hearing that she turned off the power for four days. I find it appropriate to award the tenant 50% of her rent on a per diem basis to reflect that electricity is a significant utility necessary for the use and enjoyment of the rental unit as living accommodation but that other utilities were not terminated and occupation of the rental unit continued during those days. Since the tenant did not present any receipts for the purchase of food or a flashlight, or evidence to demonstrate the extent of her loss of groceries, I find that portion of her claim to be unsubstantiated. Therefore, I award the tenant the sum of \$50.00 calculated as $\$730.00 \times 4/31 \text{ days} \times 50\%$, rounded up.

As provided under section 72 of the Act, I offset the amount awarded to the tenant against amounts awarded to the landlord and I provide the landlord with a Monetary Order in the net amount calculated as follows:

Unpaid rent: August and September 2014	\$ 1,460.00
Loss of Rent: October 2014	730.00
Loss of Rent: November 1 – 7, 2014	170.33
Filing fee	50.00
Less: award to tenant for loss of electricity	<u>(50.00)</u>
Monetary Order for landlord	\$ 2,360.33

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an order of the court.

The security deposit remains in trust, to be administered in accordance with the Act.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant.

The tenant has been awarded \$50.00 for loss of electricity and this award has been offset against the amounts owed to the landlord. The landlord has been provided a Monetary Order for the net amount of \$2,360.33 to serve and enforce.

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: November 04, 2014

Residential Tenancy Branch

