



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OCT, ERP, RR, LRE, RR, FF, O

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated November 19, 2014 and for monetary compensation for loss of cable service and reduction in amenity or “quiet enjoyment” of the premises resulting from a fire. He seeks the future cost of moving and counselling costs incurred and wage loss suffered by his girlfriend. He also seeks a compliance order, a repair order and a rent reduction.

The landlord’s Notice alleges that the tenant has been repeatedly late paying rent and that the tenant or a person permitted on the premises by him has either, a) seriously jeopardized the health or safety or lawful right of the another occupant or the landlord, or b) has put the landlord’s property at significant risk. The Notice also claims that the tenant has caused extraordinary damage to the unit.

Proof of any of these allegations is justification for eviction under s. 49 of the *Residential Tenancy Act* (the “Act”). The landlord requests an order of possession pursuant to s. 55 of the *Act* should the Notice be upheld.

This matter first came on for hearing on December 29, 2014 and was adjourned by consent at the landlord’s representative/son Mr. I.L.’s request as he was out of the country. The matter came on for hearing again on January 29, 2015 and was adjourned by consent at the tenant’s request.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that there was justification for the eviction Notice? Does that evidence show that the tenant is reasonably entitled to a compliance order or repair order or a monetary award or rent reduction?

Background and Evidence

The rental unit is one bedroom basement suite in the landlord Mr. S.S.L.'s home. The tenancy started in February 2012. The current monthly rent is \$550.00, due on the 15th of each month. The landlord holds a \$250.00 security deposit.

The tenancy was a happy one for quite some time. The landlord Mr. S.S.L. lived upstairs with his family and the relations between the parties were good.

In or about June 2014 the landlord moved out and his son, Mr. I.L. the landlord's agent at this hearing, moved in. Relations were still good with the tenant, however the cable service the tenant had been enjoying from the beginning, a "premiere" service, was "cut" according to the tenant. Mr. I.L. took the cable box from the tenant's suite claiming the need to have it repaired and it was not returned.

A minimal service was restored in late September or October.

The landlord's agent/son Mr. I.L. says that premium cable was not included in the rent. Neither side produced a written tenancy agreement to indicate what was or was not included in rent.

Mr. I.L. claimed that the tenant has been uncooperative in arranging for the cable servicemen to attend. He provided and referred to some text messages to show the tenant's failure to cooperate. The tenant produced a more complete record of text messages which show he has been open and willing to arrange for the repairs, even without the necessity of a formal notice to enter.

The main issue between the parties centers around a fire that occurred in the tenant's suite late in the evening of November 15, 2014 or the early morning hours of the next day. The tenant had turned on the bathroom light. Sparks shot out of the ceiling fixture. The sparks ignited towels draped over the glass shower enclosure. The ceiling caught fire. The tenant directed his girlfriend to call 911 but she couldn't find her phone. The tenant proceeded to fight the fire through smoke and heat, using the shower nozzle/hose apparatus.

Someone from upstairs detected the smoke and called Mr. I.L. who told them to call the 911. The fire department attended but the tenant had by then extinguished the fire, after suffering some minor burns. The firemen gave the tenant "air" by which I assume is meant oxygen and they attended to his burns. They directed the tenant to conduct a "fire watch" for the remainder of the night to ensure the fire did not rekindle.

There are two smoke detectors in the rental unit. Neither went off. Indeed, the tenant produced a photo of the melted remains of the smoke detector in the bathroom ceiling.

The fire department report shows that the “igniting object” was “electrical distribution equipment” and that the “form of heat” was “spark, electrical.”

The tenant provided pictures of the aftermath of the fire showing significant damage to the ceiling and debris in the bathroom. The installer of the vent system had used plastic vent hose between the tenant’s bathroom ceiling and the floor of the upper house. It had melted and fallen into the bathroom. The glass shower doors had exploded from the heat. The fan assembly has hanging from the ceiling. The tenant says that as a result of the fire there is no electrical power to the bathroom or bedroom, nor to the microwave or the oven.

As of the date of this hearing the bathroom has not been cleaned up or restored. No insurance agent or restoration workman has attended. The tenant says the fire department told him not to touch anything in the bathroom. Again, the landlord’s representative produced some isolated text messages to argue that the tenant has failed to cooperate with the attendance of restoration people at the rental unit, but the tenant has produced a more complete history of the texts which show that he has been very cooperative and accommodating in trying to have the rental unit restored.

After the fire the tenant was authorize to use an empty bedroom and bathroom also on the lower floor where his rental unit was. Mr. I.L had been using it as an office.

That lasted for one night only. The day following the fire a family friend of the landlord’s, a Mr. H., came and told him he could not use the bedroom/bathroom that was Mr. I.L.’s office. He told the tenant there was no insurance to cover the cost of restoration and so the tenant had to leave; had to vacate. Later Mr. H., thinking the tenant and his girlfriend were out, tried to break into the suite. The sliding glass entry door was locked. Mr. H. attempted to break through the glass, hitting it with his forearm wrapped in a cloth. The tenant’s girlfriend was traumatized by the incident. The police attended and told Mr. H. never to return.

Since then the tenant has been occupying the suite “like a cavemen” without repair and lacking power to the bedroom or bathroom, the microwave and oven. The toilet and sink are functional but the bath/shower is not. He is determined to stay until this dispute has been resolved and has been paying rent as it has come due.

Analysis

In reaching this decision I have considered all the evidence adduced at the hearing.

The landlord's representative claims the tenant has been repeatedly late paying rent. In support he refers to a series of three rent receipts for the months of June, August and September 2014. The receipts indicate that rent was received two to four days after the 15th of each of those months. The receipts were given to the tenant all at once. Mr. I.L. stated they were prepared by him specifically serve as proof of repeated late payment. The tenant did not know that until this hearing. They are the only receipts the tenant has ever received from the landlord.

The tenant pays his rent in cash, delivered to the landlord at the upstairs address. He says that sometimes there is no one home and so rent is late. He does not dispute he's paid rent after the 15th of many months over the past three years. He says that often it was not his fault. No one was home. The landlord has never been indicated to be a problem until the Notice was issued.

In my view the method of rent payment; cash to the landlord's door, creates a significant uncertainty whether rent has been paid late or not. A tenant required to pay rent in such fashion is not late paying his rent if the landlord is not home. In any event, there was a long standing slackness about rent being received exactly on the 15th of each month. In such a circumstance I consider it was incumbent on the landlord to give the tenant fair warning about requiring rent on time before demanding strict compliance and basing late payment as a ground for ending the tenancy. If the landlord wished to ensure payment on time, it was incumbent on him to set up a reliable method of receiving payment as well. Cash at the door of a possibly empty house will not suffice. Giving cash rent to anyone apparently at the premises will not do either, especially when the landlord is not in the habit of supplying receipts.

I dismiss this ground for eviction.

In support of the Notice the landlord's representative Mr. I.L. argues that the tenant is permitting his dog to defecate on the lawn and not cleaning it up and that he left dog hair on the lawn. The tenant says it's not his dog leaving the droppings, it's the landlord's dog. He says he combed his dog on the front steps once and picked up the balled hair afterwards. He was unaware there was any issue about either complaint. He was unaware the landlord was taking a photo of him combing his dog. I cannot determine who is responsible for the dog droppings but in any event, failure to pick up dog droppings or some dog hair is not a ground for eviction under this Notice. It hasn't

been shown to have “seriously jeopardized the health or safety or lawful right” of anyone or put the landlord’s property at “significant risk” as claimed in the Notice.

I dismiss this ground for eviction.

The landlord’s representative argues that because of the fire in November 2014 the tenant put the landlord’s property at significant risk and “caused extraordinary damage” to the rental unit. That appears to be a puzzling contention considering the landlord admits the tenant did not cause the fire and it is apparent that the tenant’s quick and selfless action in putting it out may have save the entire dwelling and possibly the lives of the people upstairs.

Yet the landlord’s representative argues that because the tenant failed to call 911 and alert the fire department, the fire damage was greater than it might have been. This contention is, frankly, odious. It defies common sense. The tenant attacked and subdued the fire immediately. The fact that the landlord would dare to advance this argument merely confirms the tenant’s evidence that after the fire the landlord wanted him out for good by whatever means. I sense that the fact that the premises appears to be in contravention of local land use bylaws and codes may have much to do with the landlord’s position in wanting the tenant out. It bolsters the tenant’s contention that the landlord has declined to repair and restore the premises.

I dismiss this ground for eviction.

The Notice to End Tenancy dated November 19, 2014 is hereby cancelled.

In regard to the tenant’s cable television claim, once again, the landlord has put himself at a disadvantage by failing to present a written tenancy agreement with the tenant. Without that agreement to say otherwise, I determine that the facilities and services the tenant was entitled to with his rent were the ones there and being provided to him at the start of the tenancy. That means that “premium” cable service was included in rent.

I find that the premium cable service was discontinued in June 2014 and that it has not been reinstated. I find that the service given to the tenant to replace it after about three months was a basic service of far less value. The tenant is entitled to damages for the withdrawal of this service. The difference in cost between the services may be a helpful indicator in determining the measure of damages when the tenant has actually incurred that cost, but that did not happen here. There is no evidence before me that the tenant suffered any particular loss or hardship or inconvenience by the discontinuance of the service. His television watching habits remain unknown. He may not watch television

much or at all. The tenant has failed to prove his damages in this case. He is nevertheless entitled to nominal damages for the landlord's breach (see Residential Tenancy Branch Policy Guideline 16 "Claims in Damages"). I award him \$100.00 nominal damages for this breach of his tenancy agreement.

The landlord's representative submits that the landlord or his workmen could not enter the rental unit because the landlord did not retain a key for himself. The tenant had the only key. I accept the tenant's evidence that he was ready to accommodate the landlord by either being at the premises to let people in or leaving a key hidden for the landlord. In any event, it is a landlord's responsibility to have access to his own rental property, at the least in case of emergencies. The landlord realizing he had no key, should properly have had the locks rekeyed, giving the tenant a key and retaining one for himself.

I find that the landlord has not made a good faith effort to repair and restore the rental unit after the November 2014 fire. Telling is the complete lack of any statutory entry notice under s. 29 of the *Act*. Had it been true that the tenant wasn't cooperative in allowing entry to the landlord's workmen (which, I find as a fact, did not occur), such notice would have been the first step a reasonable landlord would have taken to assess and repair his property.

As a result, since mid-November the premises have not been reasonably habitable. There is no lighting in the bathroom or bedroom and the microwave and oven do not work. The tenant cannot use the shower/bath facility. I consider the value of such premises to be, at most, \$100.00 per month and I award the tenant recovery of \$450.00 for the rental period November 15 to December 15 and \$450.00 for the rental periods of December/January and January/ February 2015 for a total award of \$1350.00 under this head of damages.

I consider that the premises will not be restored before March 15 and the tenant will be there pending any one month Tenant's Notice he might give under s. 45 of the *Act* and so I direct that the tenant's rent for the rental period February 15 to March 14, 2015 be reduced to \$100.00. If the rent due February 15, 2015 has been paid by the time this decision is received and if the landlord declines to rebate \$450.00 of it immediately, the tenant may apply for an additional monetary award, I grant the tenant any leave that may be required to do so.

I dismiss the tenant's claim for his anticipated cost of moving, with leave to re-apply. It is not reasonably certain that the tenant will be moving or incurring that cost in the foreseeable future. If he does he may re-apply for compensation but will be required to

prove that the cost is somehow different that the cost he would bear in ultimately vacating the premises under normal circumstances.

The tenant seeks to recover an estimated cost for counselling for his girlfriend and for wage loss she suffered as a result of the break-in attempt by Mr. H. I dismiss these items of the claim. The tenant's girlfriend's loss and claim for damages does not come within the scope of the *Act*. She was not a tenant, nor was she an occupant. She lived elsewhere. She is free to pursue her remedies in another forum, such as the Provincial Court.

The tenant seeks to recover travel costs, fuel expenses, incurred as a result of dealing with the police and counselling and the Residential Tenancy Branch. I dismiss this item of the claim finding that these damages are too remote in the circumstances.

The tenant also seeks a repair order. He indicates that he intends to move, but that is not a certainty. I would remind him that he continues to be a tenant and unless some other agreement is reached with the landlord, he will be responsible to give the one month/rental period notice to end his tenancy.

In the meantime, he is entitled to a repair order. I order and direct that the landlord attend to the repair and restoration, including cleaning, of the bathroom in the rental unit. The electrical work to be conducted under the supervision of a certified electrician and the other restoration work is to be conducted by a qualified and licenced tradesman. I order and direct that the landlord restore lighting to the bedroom and bathroom and to the microwave and oven in accordance with the foregoing.

I order and direct that the said work is to be completed and the rental unit be certified for occupation by the relevant authority of the local government no later than April 14, 2015.

I order and direct that any and all entry to the suite is to be after lawful written notice of entry has been given, unless the tenant otherwise agrees in writing, including by text message or email.

I order and direct that the tenant's rent due March 15, 2015 be reduced to \$100.00, unless the landlord has provided the tenant with a certificate of occupancy, as above.

Should a certificate of occupancy not have been issued by April 14, 2015, I direct that the tenant's rent be reduced to \$100.00 per rental period, starting April 15, 2015, until the start of the rental period following the issuance of that certificate.

In the event that the local government determines the suite to be an unlawful suite or otherwise refuses to issue a certificate of occupation due to noncompliance by the landlord, either party may re-apply for directions or further order.

Conclusion

The Notice to End Tenancy dated November 19, 2014 is cancelled.

The tenant is entitled to a monetary award totalling \$1450.00 plus recovery of the \$50.00 filing fee for this application. There will be a monetary order against the landlord for the total of \$1500.00. The tenant is free to enforce the monetary order or to set off any amount owing against money owed to the landlord.

I grant the tenant a repair order in the terms above.

I grant the tenant a rent reduction commencing February 15, 2015, on the conditions and terms above.

I grant the parties any leave required to re-apply should a certificate authorizing occupation of the suite not be obtainable. I do not consider myself seized of the matter should either party apply.

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: February 06, 2015

Residential Tenancy Branch

