



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, O, FF

Introduction

This hearing was scheduled to hear a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; for monetary compensation for lack of heat and hot water; orders for the landlord to comply with the Act, regulations or tenancy agreement; and, orders for the landlord to provide services or facilities required by law. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

Evidence and Submissions

The tenant confirmed that he did not serve any evidence to the Residential Tenancy Branch or the landlord in support of his application.

The landlord served evidence to the branch on January 27, 2015 which is within the time limit for serving evidence in response to an application. The tenant stated that he received the landlord's evidence but that it was "illegible and irrelevant". I noted that the vast majority of the landlord's evidence was type-written and the documents provided for my review were legible. The tenant stated that the pages he received had become damp or wet as they were posted on his door. The tenant did not provide a satisfactory response to explain how he determined the evidence is irrelevant if it was illegible to him. As the hearing proceeded the tenant confirmed the content of certain documents and referred to content of other documentation included in the landlord's evidence package and I was satisfied the tenant had received legible copies of the landlord's evidence. Therefore, I accepted and considered the landlord's submissions of January 27, 2015 in making this decision.

It should be noted that the landlord also served additional written submissions after the teleconference call ended but before the issuance of this decision. I did not consider these additional submissions pursuant to the Rules of Procedure as I had not requested them or authorized further submissions.

During the hearing, I noted that the landlord's January 27, 2015 evidence package included a Monetary Order Worksheet prepared by the landlord. As the landlord had not filed an Application for Dispute Resolution I informed the parties that I could not deal with monetary claims by the landlord by way of this proceeding but the landlord was informed during the hearing of her right to file her own Application for Dispute Resolution to seek compensation from the tenant.

Jurisdiction

As the parties were informed during the hearing, my authority to resolve disputes is limited to tenancy agreements that fall under the jurisdiction of the *Residential Tenancy Act*. Contracts for services (such as a contract for renovation services) are not within my jurisdiction and disputes involving contracts for services are to be resolved in the appropriate forum. In this case, however, the parties created a tenancy agreement that included provisions for deductions from rent where the tenant provided for labour and materials for renovations. As such, I find it is within my jurisdiction to make findings as to whether rent was paid or otherwise satisfied by services performed by the tenant.

Request for possession of rental unit

During the hearing I invited each party to provide a possible resolution to this dispute. The tenant sought to have the tenancy continue at a reduced rent. The landlord orally requested that I order the tenant to vacate the rental unit immediately. I have considered the landlord's oral request to be a request for an Order of Possession that may be considered under a tenant's application to dispute a Notice to End Tenancy as provided by section 55(1) of the Act.

Technical difficulties

Finally, I should be noted that this hearing was conducted by way of teleconference call and that during the telephone call an echo of the person speaking could be heard. The parties confirmed that they were not recording the proceeding. Attempts to resolve the technical difficulty were made but those attempts did not improve the sound quality. I was satisfied that I was able to understand each of the parties' respective positions despite the disruptive nature of the echo.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the tenant entitled to compensation for lack of heat and hot water?
4. Is it necessary to issue orders to the landlord to comply with the Act, regulations or tenancy agreement?
5. Is it necessary to issue orders to the landlord to provide services or facilities required by law?

Background and Evidence

The parties entered into a written tenancy agreement in August 2014 for the main floor of a residence where the landlord resides in the lower unit. The monthly rent was set at \$1,200.00 payable on the 1st every month plus the tenant is responsible for paying for all utilities. The parties agreed that the rent would be satisfied by way of a payment of no less than \$600.00 to the landlord and that up to \$600.00 could be satisfied by way of labour and materials provided by the tenant for certain renovations. It was further agreed that if the tenant contributed more than \$600.00 in labour and material in a given month the excess contribution would be carried forward as credit for labour and material of a subsequent month.

10 Day Notice to End Tenancy for Unpaid Rent

The tenant did not pay any monies to the landlord for August 2014 but cleaned the rental unit and painted a room in exchange for rent for the partial month. This arrangement was provided for in the tenancy agreement.

It was undisputed that for the months of September 2014, October 2014, November 2014 and December 2014 the tenant paid \$600.00 to the landlord for rent. In January 2015 the tenant paid \$790.00 to the landlord for rent plus \$110.00 for utilities.

On January 1, 2015 the tenant provided the landlord with a document entitled "Repairs to [name of property]". By way of this document the tenant valued the labour and materials he provided for repairs and renovations to the property during the tenancy (a sum of \$2,160.00) and applied toward his rent obligation. The document also demonstrates that in addition to labour and materials the tenant also withheld \$1,000.00 from rent for a "deposit" on an anticipated deck repair. The tenant's valuations and

deductions for labour and materials and a deck deposit is the fundamental dispute in this case and lead to several email exchanges between the parties.

On January 11, 2015 the landlord served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) indicating the tenant failed to pay rent of \$1,200.00 as of January 1, 2015 and a stated effective date of January 24, 2015. The tenant did not pay any rent after receiving the Notice and failed to dispute it within the time limit for doing so.

In applying to dispute the Notice, the tenant indicated that he was disputing the Notice on the basis it contained false information. During the hearing, the tenant explained that he is of the position he has paid or satisfied all of his rent obligations up to and including the month of January 2015.

In response to the tenant's email of January 1, 2015, the landlord emailed the tenant on January 3, 2015 and indicated that the tenant's deduction for gutter cleaning exceeded the amount the tenant had stated verbally to her in the days preceding; and, with respect to the deck the landlord requested a "detailed quote before you start" and she insisted that winter was not suitable for outdoor projects. She went on to state in the email that unless he could not start the deck in the following week and finish before the end of January he should pay all arrears immediately.

During the hearing, the tenant testified that he had informed the landlord he could not guarantee when he could start the deck but that he would guarantee her it would be done before the end of March 2015. The tenant acknowledged that he had not commenced any repair work on the deck as of the date of the hearing. The tenant justified taking a deposit by stating he had told the landlord he would require a deposit before starting work on the deck.

The landlord was of the position that the value of the repair/renovation work performed by the tenant during the tenancy amounts to approximately \$1,000.00 meaning all of the rent he was withheld (which the landlord calculated as \$3,510.00 as of January 2015) greatly exceeds the \$1,200 she indicated on the 10 Day Notice.

Lack of heat and hot water

The tenant submitted that the landlord turned off the furnace and hot water tank and he requested compensation of \$1,000.00. The tenant did not provide an explanation as to how he calculated this amount of compensation but indicated that he was without these services for most of the month of January 2015 and currently the tenant has heat from

the furnace but he described the water as being very cold. The tenant explained that since hot water was turned off he used a hot plate and kettle to boil water for doing dishes which resulted in electrical breakers becoming overloaded and the loss of several electrical outlets. The tenant stated that he currently goes to a nearby swimming pool to bathe.

The landlord acknowledged that on January 10, 2015 she turned the hot water tank down and turned off the furnace intermittently and she attempted to justify those actions by explaining the tenant was supposed to get the utility accounts in his name and that he did not and had not paid all of the utility bills that came in her name. The landlord also stated that she cancelled the natural gas account in her name as of January 15, 2015 but that natural gas continues to be provided to the property. The landlord is of the position that continued use of the natural gas constitutes utility theft by the tenant.

The landlord submitted that the tenants had space heaters to use. The landlord acknowledged that some of the electrical breakers did trip with the use of high-energy appliances. Nevertheless, the landlord claimed that heat and hot water were restored on January 16, 2015 after a police officer attended the property and instructed her to turn the hot water tank and furnace back on.

The tenant stated that the police have attended the property several times since the landlord turns the heat and hot water off after the police officers leave the property. The landlord denied turning off the hot water or furnace after January 16, 2015.

Orders for compliance

The tenant requested that I provide orders for the landlord to provide heat and hot water without interruption and ensure the electricity is supplied to the outlets were turned off when the electrical breakers tripped.

The landlord pointed out that the tenant changed the locks to the rental unit and she requested an order to correct this violation. The tenant explained that he did so because a neighbour told him that the landlord had entered the rental unit during a previous tenancy. During the hearing, I ordered the tenant to either reinstall the original lock or provide the landlord with a copy of the key for the new lock within two days. The tenant agreed to give the landlord a copy of a key for the new lock.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

10 Day Notice to End Tenancy for Unpaid Rent

Under section 26 of the Act, a tenant is required to pay rent that is due to the landlord, 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 specific and limited circumstances when a tenant has a legal right to withhold rent.

If a tenant fails to pay all of the rent that is due to the landlord the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. A tenant in receipt of a 10 Day Notice has five days to pay the outstanding rent or file to dispute the Notice. If a tenant disputes a 10 Day Notice on the basis he has satisfied all of the rent that was due to the landlord, as in this case, the tenant bears the burden to prove he paid the rent or had a legal right to withhold rent.

In this case, the parties had agreed that payment of rent may satisfied, in part, by way of the tenant providing "labour and materials for renovation"; however, the parties are in dispute as to the value of labour and materials provided by the tenant and yet I was provided very little evidence by either party to substantiate the value of labour and materials they have put forth in this dispute. Accordingly, I make no finding as to the value of the labour and materials provided by the tenant for work performed. Nevertheless, I have reached the conclusion that the tenant failed to pay at least \$1,000.00 in rent prior to the issuance of the 10 Day Notice as explained below.

Upon review of the tenancy agreement I find no provision that authorizes the tenant to deduct a "deposit" from rent. Rather, the written tenancy agreement provides that a portion of rent may be satisfied by "labour and materials". Since the tenant withheld \$1,000.00 toward the anticipated deck repair, the tenant has to show that he contributed \$1,000.00 in labour and materials in order to make such a deduction. The ordinary meaning of "labour" is the effort put forth in the creation of goods or services. I interpret the reference to "materials" to mean materials purchased or provided by the tenant or for which the tenant has incurred a cost. During the hearing the tenant acknowledged that he had not commenced work on the deck and provided no evidence to suggest he purchased, delivered or incurred a cost for materials for the deck repair. Therefore, I find the tenant has not contributed \$1,000.00 in labour and materials toward the deck repair and he did not have a right to make that deduction from rent.

I have also considered that after taking the “deposit” from rent, the landlord communicated to the tenant that she was agreeable to allowing the deduction if the tenant completed the deck repair in the month he took the deposit (January 2015). I find her position consistent with the tenancy agreement in that that deductions are to be taken in the month labour and materials are provided or a subsequent month. Again, since the tenant acknowledged that he has not provided any labour or material with respect to the deck repair or purchase materials for the deck repair, I find he did not establish that the landlord authorized him to withhold \$1,000 from rent for a deck repair.

In light of the above, I find the tenant failed to establish that he satisfied all of the rent that was due to the landlord and I dismiss the tenant’s request to cancel the 10 Day Notice.

Section 55(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a Notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

Having dismissed the tenant’s request to cancel the 10 Day Notice, pursuant to section 55(1) I grant the landlord’s oral request for an Order of Possession that was made during the hearing. With the landlord’s copy of this decision is an Order of Possession effective two (2) days after service upon the tenant.

Lack of heat and hot water

The Act provides that a landlord must not restrict or terminate an essential service or facility necessary for the use and occupancy of the rental unit. I accept that heat and hot water is an essential service.

Upon review of the tenancy agreement, I note that the tenant was required to pay for utilities but the tenancy agreement does not stipulate that the utility accounts are to be in the tenant’s name. Where a utility account is in the landlord’s name but the tenant is responsible for paying for the utility, the landlord is to serve the tenant with a written demand for payment and then the tenant has 30 days to pay the amount owed for utilities. Failure of a tenant to pay the landlord for utilities within those 30 days is a basis for the landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent and

Utilities. The landlord's remedy is not to terminate or restrict a service or facility. I find the landlord's actions of turning down the hot water tank and furnace constitute a violation of the Act and the tenant is entitled to compensation for loss of these services.

In this case the parties were in dispute as to the time period in which heat and hot water were terminated or restricted. The landlord acknowledged that it was for the period of January 10 – 16, 2015; however, the tenant stated that it was for many more days. As the tenant is the applicant in this dispute, the tenant has the burden to prove his claim. I find the disputed testimony insufficient for me to conclude the dates in which the tenant suffered loss of these services other than those admitted by the landlord. Therefore, I find the tenant has established an entitlement to compensation for the seven days of January 10 – 16, 2015.

I note that in the tenant's email of January 22, 2015 he refers to the water being "warm" which is inconsistent with his testimony that the water was very cold. I also note that the tenant did not provide any receipts or other evidence to corroborate his statements that he is bathing at a swimming pool.

Considering the tenant was provided "warm" water which could be boiled and had use of space heaters, but taking into account the seriousness of the landlord's violations, I find it reasonable to award the tenant compensation of 25% of the daily rent for the seven days that were substantiated which I calculate to be \$68.00 [calculated as $\$1200.00 \times 7/31 \text{ days} \times 25\%$ (rounded)].

Orders for compliance

As the tenancy has legally ended and possession of the rental unit is to be returned to the landlord I find it unnecessary to issue orders for compliance to the landlord with this decision.

During the hearing, I had ordered the tenant to provide the landlord with a copy of the key to the new lock as the Act prohibits a tenant from changing the locks unless the tenant has the prior authorization of the landlord or an Arbitrator. The tenant had no such authorization prior to changing the locks and merely provided hear-say evidence in support of his actions. Since the tenancy has ended and the tenant is required to vacate, all keys and means of accessing the rental unit are to be provided to the landlord upon returning vacant possession of the rental unit to the landlord.

Filing fee and Monetary Order for tenant

As I have found both parties' actions contributed to this dispute, I award the tenant recovery of one-half of the \$50.00 filing fee he paid for this application, or \$25.00.

Provided to the tenant with this decision is a Monetary Order in the total sum of \$93.00 [calculated as \$68.00 + 25.00] in recognition of the amounts awarded to him with this decision.

Conclusion

The tenant's request to cancel the 10 Day Notice has been dismissed and the landlord has been provided an Order of Possession under section 55(1) of the Act. The Order of Possession is effective two (2) days after service upon the tenant.

The tenant's requests for orders for compliance have been dismissed as the tenancy has ended.

The tenant has been provided a Monetary Order in the amount of \$93.00 in recognition of the compensation awarded to his with this decision.

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 13, 2015

Residential Tenancy Branch

