



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, OLC, ERP, RP, LRE, LAT, AS, RR, SS, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated February 2, 2015 ("10 Day Notice"), pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to serve documents or evidence in a different way than required by the *Act*, pursuant to section 71;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- an order allowing the tenant to assign her tenancy agreement or sublet the rental unit because the landlord's permission has been unreasonably withheld, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. Both parties testified that they did not require English language interpreters at this hearing and that they did not require an adjournment of the hearing in order to obtain the assistance of interpreters. "FD" testified as a witness on behalf of the landlord and both parties had an opportunity to ask questions and cross-examine FD. The tenant stated that she wished to call "FZ" as a witness, but indicated that he was working during the time of the hearing. During the hearing, the telephone operator unsuccessfully attempted to reach FZ at the number provided by the tenant, and indicated that the number was invalid as no ring tone could be heard.

The tenant confirmed that the landlord handed her the 10 Day Notice on February 2, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice on February 2, 2015.

The landlord confirmed that the tenant handed him the application for dispute resolution hearing notice ("Application") on February 6, 2015. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's Application on February 6, 2015.

Both parties confirmed that they each served written evidence to the Residential Tenancy Branch ("RTB"), prior to this hearing. Both parties testified that they did not serve this written evidence on the other party. Rule 3.1 of the RTB Rules of Procedure requires each party to serve their written evidence upon the other party, prior to the hearing. Accordingly, I advised both parties that I was unable to consider their written evidence, including photographs, receipts, copies of cheques, and miscellaneous letters, at this hearing or in my decision.

Preliminary Issue – 1 Month Notice

The landlord testified that he personally served the tenant with a 1 Month Notice on February 2, 2015. The tenant confirmed receipt of the landlord's 1 Month Notice on February 6, 2015, after she filed her application for dispute resolution on February 5, 2015. Neither party provided a copy of the 1 Month Notice for this hearing.

At the outset of the hearing, the tenant testified that she filed her Application to dispute the landlord's 1 Month Notice. The tenant claimed for this relief in her Application. The tenant then changed her testimony to state that she did not intend to dispute the 1 Month Notice, as she received it after she filed her Application. Throughout the hearing, the tenant repeatedly changed her testimony to indicate that she did and then did not

intend to dispute the 1 Month Notice. The tenant stated that she was new to the hearing process and that she did not understand the relief she was claiming, despite the fact that I clarified the relief with her several times throughout the hearing. The tenant made the same testimony changes with respect to the 10 Day Notice but finally confirmed that she did intend to dispute the 10 Day Notice.

The tenant stated that she wished to withdraw her application to cancel the 1 Month Notice. The tenant indicated that she intended to secure witnesses and serve written evidence prior to a future hearing to cancel the 1 Month Notice. I advised the tenant about the consequences of withdrawing this relief, noting the presumptive end to the tenancy if an application is not filed by the deadlines outlined in the *Act*. I advised the tenant that she would not be permitted to withdraw her application to cancel the 1 Month Notice, only to file the same application later. The tenant insisted that she wished to withdraw her application to cancel the 1 Month Notice, which is hereby withdrawn.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant authorized to:

- change the locks to the rental unit?
- serve documents or evidence in a different way than required by the *Act*?

Is the tenant entitled to any orders against the landlord?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this tenancy began on October 1, 2014 for a fixed term ending on June 30, 2015. The tenant occupied the same rental unit prior to October 2014 under a different tenancy agreement. Monthly rent in the amount of \$900.00 is payable in advance of the following month, on the 30th day of each month, except for the month of February when it is due on the last day of the month. A security deposit of \$450.00 was paid by the tenant on September 26, 2014 and the landlord continues to retain this deposit. A written tenancy agreement governs this tenancy, but one was not provided by either party for this hearing. The tenant continues to reside in the rental unit. The

rental unit is one bedroom in a three bedroom house. The other two bedrooms are currently vacant.

The landlord issued a 10 Day Notice, indicating that rent of \$900.00 was due on February 2, 2015. The landlord stated that he went to the bank on February 1, 2015, in order to deposit the tenant's post-dated rent cheque for February 2015. The landlord stated that due to the tenant's previous dishonoured rent cheque from January 2015, her negative credit history and the fact that she closed her bank account previously, he decided not to deposit the tenant's February rent cheque on this date. The landlord stated that he returned to the bank on February 2, 2015 and the bank advised him not to deposit the tenant's rent cheque because the tenant's bank account balance was insufficient to cover the \$900.00 rent payment. The landlord stated that he decided not to deposit the tenant's rent cheque on this date, on the advice of his bank. When questioned as to how confidential information about the tenant's bank account balance was disclosed to the landlord, the landlord stated that he has a "good relationship" with his bank. The landlord indicated that he confronted the tenant about the February 2015 rent payment and the tenant advised him that there was enough money in her bank account and to deposit the rent cheque. The landlord stated that he thinks the tenant deposited more money into her bank account after he discussed the rent issue with her on February 2, 2015. The landlord stated that he did not cash the tenant's rent cheque after February 2, 2015, as he was afraid that it would be returned for insufficient funds and he would have to pay a fee. The landlord stated that he issued the 10 Day Notice because the tenant did not pay rent on the first day of the month, when it was due.

The tenant testified that she provided the landlord with post-dated rent cheques for January and February 2015. The tenant agreed that her January 2015 rent cheque was returned for insufficient funds but that she paid cash to the landlord to replace this rent payment. The tenant stated that the landlord approached her on February 2, 2015, alleging that the tenant had stopped payment on her rent cheque. The tenant stated that she advised the landlord at that time to cash her rent cheque, that she had not stopped payment on the cheque and that sufficient funds were in her bank account. The tenant stated that the landlord withdrew \$900.00 from her bank account on February 2, 2015 and that rent has been paid in full. The tenant indicated that she had a four-page bank statement and a bank machine document indicating that this money was withdrawn by the landlord; the tenant stated that she did not provide these documents for this hearing because she was unaware that it was necessary.

The tenant indicated that the roof of the house requires emergency repairs because water leaks into her bedroom when it rains. The landlord acknowledged that the tenant advised him about a roof leak and that he retained a professional roofer, FD, to fix the

leak on October 21 and November 29, 2014. The tenant acknowledged that the landlord fixed the roof twice, but that the area above her bedroom was not fixed. The tenant stated that only the roof area above one of the vacant bedrooms was fixed.

FD testified that he is a certified roofer who works for company GVRC, which is fully insured and licensed. FD stated that he was paid by the landlord to repair two leaks in the rental unit roof in October and November 2014. FD stated that he repaired the shingles, used cement and covered the roof with a plastic tarp. The tenant indicated that she asked FD to cover the roof area above her bedroom with a plastic tarp and that FD refused to do so, even though the tenant offered to pay for this cost. FD testified that the tenant asked him to cover the entire roof, not just her bedroom area, with the plastic tarp. FD said that he advised the tenant to speak to the landlord about her requirements. FD noted that he was only able to perform work requested by the landlord, which was to fix the leaking part of the roof, which he did. In November 2014, FD stated that he inspected the roof and ensured that it was not leaking. FD noted that he has not been advised by the landlord of any further problems with the roof. FD acknowledged that the house has an old roof that requires full replacement in approximately five years, as the plastic tarp is only a temporary solution that will last approximately one to two years.

Analysis

10 Day Notice

In accordance with subsection 46(4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant received the 10 Day Notice on February 2, 2015 and filed her Application on February 5, 2015. Accordingly, the tenant complied with the five day limit under the *Act*.

Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. The landlord testified that he chose not to deposit the tenant's post-dated rent cheque for February 2015, for a variety of reasons. I find that the reasons provided by the landlord are improbable. I do not accept that a bank would release confidential banking information about the tenant to the landlord on the basis of a "good relationship." The landlord provided no rent ledger or other documents to show that rent was unpaid or to show that the bank advised him that there were insufficient funds to deposit the tenant's rent cheque.

The landlord indicated that he also refused to deposit the tenant's rent cheque in order to avoid NSF charges which he incurred in January 2015. The tenant stated that the landlord withdrew \$900.00 for rent on February 2, 2015 and she has proof of this withdrawal. The tenant did not submit this evidence for this hearing. In any event, it is the landlord's burden to show that rent is unpaid for February 2015 and the landlord failed to meet this onus. Accordingly, the tenant's application to cancel the landlord's 10 Day Notice is allowed. The landlord's 10 Day Notice, dated February 2, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Orders

When questioned as to which documents or evidence the tenant wished to serve in a different way than required by the *Act*, the tenant was unable to provide any specific details. The tenant indicated that she wished for a third party to be involved in the future if she was required to serve any documents on the landlord. As the tenant was able to serve the landlord personally with her Application, I find no merit to the tenant's request for authorization to serve documents or evidence in a different way than required by the *Act*. I dismiss this portion of the tenant's application.

The tenant testified that the landlord did not refuse her requests to sublet the other 3 bedrooms of the house. The tenant stated that she wished to find two roommates for the other two vacant bedrooms in the house, in order to assist with paying her monthly rent. The tenant only occupies one bedroom in the house, as per the tenancy agreement. The tenant does not occupy the other two bedrooms in the house. The tenant does not intend to assign her tenancy agreement or sublet her own rental unit; she intends to find roommates to occupy the other two vacant bedrooms in the house. Accordingly, I dismiss the tenant's application for an order regarding subletting her rental unit and assigning her tenancy agreement, as there is no evidence that the tenant has made any requests of the landlord, in these regards.

The tenant stated that she requires authorization to change the locks to the rental unit and for the landlord to provide written notice before entering the rental unit. The tenant indicated that the landlord "almost never" notifies her when he enters the rental unit. The tenant stated that the landlord has entered her rental unit without prior notice on five to seven occasions. She could not recall the dates but stated that it happened in mid-August 2014. The tenant stated that she accepted this entry in the past but wishes to prevent unlawful entry in the future. The landlord denied entering the tenant's rental unit unlawfully. The landlord stated that he has always provided written notice to the tenant when he enters the rental unit. The landlord indicated that he provided 24 hours'

notice on two occasions in order to inspect the rental unit. The tenant acknowledged that the landlord gave her notice in order to inspect the rental unit. I do not find that the tenant has provided sufficient evidence regarding unlawful entry into the rental unit by the landlord. The tenant could not recall the dates of unlawful entry and admitted that the landlord provided her notice for an inspection. Accordingly, the tenant's application for authorization to change the locks to the rental unit and for an order to suspend or set conditions on the landlord's right to enter the rental unit, is dismissed.

The tenant stated that she requires orders against the landlord for repairs to be performed at the rental unit. The tenant indicated that there is no lighting in the other two vacant bedrooms of the rental unit, where she does not reside. The tenant stated that there is no heat in one of the vacant bedrooms, where she does not reside. The tenant stated that she could not use the microwave in the rental unit and that one of the doors in the rental unit does not lock. The tenant requested that repairs be made to the slippery stairs on the outside of the house and that appropriate lighting be installed in that area, as people have fallen in the past. The landlord indicated that the tenant did not advise him of any repairs, aside from a roof leak, that needed to be made in the rental unit. The tenant did not provide any documentary or witness evidence to support her claims. Accordingly, the tenant's application for an order to reduce rent for repairs, services or facilities agreed upon but not provided, an order to the landlord to make repairs to the rental unit and an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, is dismissed.

Monetary Claims

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused the damage or loss claimed.

The tenant requests a monetary order in the total amount of \$4,500.00. The tenant indicated that she replaced an old fridge and stove in her rental unit with new appliances at her own cost. She stated that the landlord refused to fix these old appliances that were dirty and in bad condition. The tenant indicated that she advised

the landlord in July 2014 that the stove was damaged prior to her commencing the tenancy. The landlord stated that the tenant advised him that the fridge and stove were too old. The landlord indicated that the tenant agreed to rent the unit in its original condition, as documented in the condition inspection report, which the landlord says the tenant signed. No condition inspection report was provided by either party. The landlord stated that the tenant moved the old stove and fridge outside the rental unit without his permission. The tenant requests compensation for these appliances, stating that she paid \$95.00 for the stove and \$200.00 for the fridge. The tenant did not provide any documentary evidence, including receipts or photographs, with respect to this monetary request. Accordingly, the tenant is not entitled to compensation for the fridge and stove that she claims to have purchased for the rental unit.

The tenant also indicated that she is entitled to lost rent because the landlord did not allow her to find roommates to occupy the other two bedrooms of the house, which would have reduced her monthly rent cost. As noted earlier, the tenant agreed to pay \$900.00 for this rental unit, as per her tenancy agreement. The tenant does not intend to assign her tenancy agreement or sublet her rental unit in order to recover this monthly rent. It is up to the landlord to decide whether he wishes to rent the other two bedrooms of the house to other tenants. The landlord stated that the tenant did not make any requests for other tenants to occupy the vacant bedrooms. The tenant did not provide any documentary evidence that her monthly rent would be reduced if other tenants occupy the two vacant bedrooms. Accordingly, the tenant is not entitled to compensation for lost rent from the two vacant bedrooms in the house.

The tenant stated that she is entitled to monetary compensation for the loss of lightbulbs or dysfunctional lights in the two vacant bedrooms of the house. The landlord denied the tenant's claims. The tenant does not occupy or use these vacant bedrooms. The tenant did not submit any receipts for purchasing lightbulbs or installing light fixtures in these bedrooms. In any event, the tenant, not the landlord, is responsible for replacing any lightbulbs in the rental unit. Accordingly, the tenant is not entitled to monetary compensation for the loss of lightbulbs or dysfunctional lights in the rental unit.

The tenant stated that she is entitled to monetary compensation for pain and suffering during this tenancy. The tenant indicated that the landlord has caused her to become medically ill from fighting with her and her previous roommates. The landlord denied the tenant's claims. The tenant did not provide any medical documentary evidence or witness evidence to support her claims. Accordingly, the tenant is not entitled to monetary compensation for pain and suffering during this tenancy.

The tenant stated that she is entitled to loss of rent and an order for emergency repairs for a roof leak in the rental unit. The tenant indicated that this roof leak has been ongoing for 2 months and that she has had to place a basin in her bedroom to contain the leak. The tenant stated that the leak causes a negative odour. Both parties agreed that the roof leak was repaired on two occasions. I accept the testimony of both the landlord and FD that FD sufficiently repaired the roof leak and ensured that no further leak was occurring as of November 29, 2014. I accept the testimony of the landlord that he was not notified by the tenant of any further roof leaks after November 29, 2014. Without notice of any further roof leaks, the landlord is unable to make any required repairs. Accordingly, the tenant is not entitled to an order to the landlord to make emergency repairs for health or safety reasons, regarding a roof leak, or for monetary compensation for a loss of rent for a roof leak in the rental unit.

Accordingly, the tenant's application for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed.

As the tenant was mainly unsuccessful in her Application, she is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost of her own \$50.00 filing fee.

Conclusion

The tenant's application to cancel the landlord's 10 Day Notice is allowed. The landlord's 10 Day Notice, dated February 2, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application to cancel the landlord's 1 Month Notice is withdrawn.

The remainder of the tenant's application is dismissed.

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 27, 2015

Residential Tenancy Branch

