



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, MNSD, ERP, RP, RR, FF

Introduction

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

- cancellation of the respondent's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order to the respondent to make repairs to the rental unit pursuant to section 32;
- an order to the respondent to make emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the respondent pursuant to section 72.

The respondent did not attend this hearing, although I waited until 1045 in order to enable the respondent to connect with this teleconference hearing scheduled for 0930. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Documents

The tenant testified that he served the respondent with his original dispute resolution package on 11 March 2015 by registered mail. The tenant provided me with a Canada Post tracking number that showed that this mailing was returned to sender as it went unclaimed.

The tenant testified that he served the respondent with his amended dispute resolution package on 25 March 2015 by registered mail. The tenant provided me with a Canada Post tracking number that showed that this mailing was returned to sender as it went unclaimed.

The tenant testified that he served the respondent with additional evidence 14 days before this hearing by registered mail. This mailing went unclaimed and was also returned to the sender.

No address for service of the landlord was set out on the tenancy agreement. The tenant testified that he pays his rent at the address to which he sent the registered mailings.

Pursuant to paragraphs 88(c) and 89(1)(c) documents may be served by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord. I find that this address is an address which the respondent carries on business as a landlord.

Pursuant to paragraph 90(a) a document sent by mail is deemed received by the recipient on the fifth day after its mailing. On the basis of this evidence, I am satisfied that the respondent was deemed served with all required documents pursuant to sections 89 and 90 of the Act.

Preliminary Issue - Application to Amend

On 25 March 2015, the tenant filed an amended application for dispute resolution.

Paragraph 64(3)(c) permits me to amend an application for dispute resolution. The tenant testified that he served these amendments. As the respondent was deemed served with the amended application in advance of this hearing date I allow the tenant's amendments.

Preliminary Issue – Scope of Proceedings

At the beginning of the hearing, the tenant indicated that he was vacating the premises on 30 April 2015. As this tenancy was ending at the end of the month, I asked the tenant if he would like to amend his claim to withdraw his application to recover his security deposit, and his applications to order repairs. The tenant indicated that he did want to amend his application to withdraw these claims. I allowed the amendment as there is no prejudice to the respondent in doing so.

There are five remaining issues:

- cancellation of the respondent's 1 Month Notice pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the respondent pursuant to section 72.

Preliminary Issue – Order to Receive Evidence After Conclusion of Hearing

At the hearing the tenant indicated that there was a written tenancy agreement in relation to this tenancy. The tenant had not provided this tenancy agreement as evidence.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing.

This document is very important in determining the legal relationship between the parties. As this document was signed by both the tenant and landlord, there is limited prejudice to the respondent in my accepting this document after the hearing as it will assist in determining what the respondent's legal relationship is to the tenant. I order that the tenant submit the tenancy agreement by fax no later than noon the day following this hearing.

I received the tenancy agreement.

Preliminary Issue – Who is the legal landlord?

I was provided with a copy of the tenancy agreement. The tenancy agreement sets out that the agreement is between GR and the tenant. The respondent is not set out as a party to that agreement. The tenant testified that the respondent was there when the tenancy agreement was signed but did not sign the agreement. The tenant testified that the respondent and GR are either brothers or brothers-in-law. I note that the respondent and GR have different last names.

The tenant testified that he pays his rent monthly by cheque and that these cheques are made out to GR. The tenant testified that he drops off the cheques at the address at which he served the respondent. The tenant testified that he believes that the respondent lives at this address. The tenant testified that he believes that both the respondent and GR own the rental unit.

I was provided with a copy of the 1 Month Notice. In the space to indicate the landlord's name the respondent's name is set out.

The scope of the Act, and in turn my jurisdiction, is established in subsection 2(1) of the Act:

Despite any other enactment..., this Act applies to tenancy agreements, rental units and other residential property.

"Tenancy agreement" is defined in section 1 of the Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 1 also defines "landlord":

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;...

This definition of "landlord" is highly inclusive and includes an agent of the owner. An agent is a person authorized by another to act for or in the place of that person. An agent may be limited in his or her scope to act.

It is clear from the 1 Month Notice that the respondent was acting as landlord for the purposes of that notice; however, from the evidence provided to me by the tenant, I am unable to determine what the full scope of the relationship is between the tenant and respondent and tenant and GR. It could be that the respondent was acting as agent for the limited purpose of the 1 Month Notice or for the entirety of the tenancy.

In this application the tenant seeks to cancel the 1 Month Notice and for various other compensation pursuant to section 67 of the Act. Section 67 of the Act sets out where an arbitrator determines that damage or loss results from **a party** not complying with the Act, regulations or tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Without knowing the precise nature of the relationship, I am unable to determine whether the responsibility for any failure to comply with the Act, regulations or tenancy agreement is the responsibility of the respondent or GR or both. On this basis, I dismiss the tenant's application for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement, for a monetary order for the cost of emergency repairs to the rental unit, and for a rent abatement with leave to reapply.

If the tenant elects to reapply, he should name both GR and the respondent in the subsequent application and serve both GR and the respondent with notice of that application. Leave to reapply is not an extension of any applicable timeline.

As I have determined that the respondent was acting as a landlord for the purpose of issuing the 1 Month Notice, there are two remaining issues:

- cancellation of the respondent's 1 Month Notice pursuant to section 47; and
- authorization to recover his filing fee for this application from the respondent pursuant to section 72.

Preliminary Issue – Mootness

The tenant testified that he is leaving this tenancy at the end of the month.

The 1 Month Notice was served 13 March 2015. The 1 Month Notice set out an effective date of 13 March 2015. Pursuant to section 47 of the Act, the earliest effective date for that notice was 30 April 2015. Section 53 of the Act operates to automatically correct incorrect effective dates: The corrected effective date of the 1 Month Notice is 30 April 2015.

If I were to cancel the 1 Month Notice the effect would be that the tenancy would continue until it was ended in accordance with the Act. The tenant would then be required to give notice in accordance with section 45 of the Act. This would result in a situation where the tenant could be liable to the landlord for May's rent as the earliest effective date for ending the tenancy pursuant to section 45 would be 31 May 2015. That would not an appropriate outcome for this application.

The tenant's application to cancel the 1 Month Notice is dismissed as the issue is moot as the tenant intends to vacate the rental unit on 30 April 2015.

Issue

The only remaining issue to be decided is whether the tenant is entitled to recover his filing fee for this application.

Analysis

Section 72 of the Act allows me to order the recovery of a filing fee from a respondent. Generally, this order is made to the successful party.

The tenant has not been successful on any issue on its merits. As such, I decline to order recovery of the filing fee in this matter.

Conclusion

The following of the tenant's claims are withdrawn:

- authorization to obtain a return of all or a portion of his security deposit pursuant to section 38;
- an order to the respondent to make repairs to the rental unit pursuant to section 32; and

- an order to the respondent to make emergency repairs to the rental unit pursuant to section 33.

The following of the tenant's claims are dismissed with leave to reapply naming both GR and the respondent:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33.

The tenant's claim for cancellation of the respondent's 1 Month Notice pursuant to section 47 is dismissed as the issue is moot. The tenancy will end 30 April 2015.

The tenant's claim to recover his filing fee is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 17, 2015

Residential Tenancy Branch