



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC

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 (the "10 Day Notice") pursuant to section 46; and a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord made no application at this hearing. The landlord provided evidence that the 10 Day Notice was personally served to the tenant on March 12, 2015. The tenant confirmed receipt of the 10 Day Notice and, in response, filed for dispute resolution. The tenant gave sworn testimony that she served the landlord with her Application for Dispute Resolution hearing package on March 19, 2015. The landlord confirmed receipt of this package. I accept that the tenant was duly served with the 10 Day Notice and the landlord was duly served with the tenant's Application for Dispute Resolution hearing package.

The tenant also testified that she submitted additional evidence on April 13, 2015 and April 20, 2015. She testified that she served the landlord with both these packages on April 15, 2015 and April 22, 2015 respectively. The landlord confirmed receipt of both packages and the materials therein. Based on the landlord's testimony and the evidence provided, I find the landlord duly served with the tenant's two additional evidentiary packages.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the tenant entitled to a monetary award for damage or loss pursuant to the *Act*?

Background and Evidence

This tenancy began on November 15, 2012 on a month to month basis. A rental amount of \$400.00 is payable on the first of each month. The tenant continues to reside in the rental unit. The landlord continues to hold a security deposit in the amount of \$200.00 paid at the start of this tenancy (November 15, 2012). The tenant submitted a copy of one page of the residential tenancy agreement with the details of the tenancy. At the bottom of this page of the tenancy agreement, with initials from both parties, the agreement states, "the landlord is not responsible for water supply".

With her evidentiary materials, the tenant also submitted; a guide to safe water for rental accommodations from a health authority; documents that she claimed reflect a problematic level of chemicals in the water; a daily log of noise concerns related to the neighbour's barking dog providing a two page list of times (but no dates); a letter from her doctor regarding her eviction in support of her search for alternative housing; and some hand-written correspondence in support of her application.

With respect to the provision of water, the tenant testified that there was a well that provided water the rental unit within which she resided. She testified that, she was aware of the well as a source of water, that she had plumbing within her rental unit to receive this water but that she also, out of her own concerns and the way in which her local community was designed; she was provided water by one of her neighbours regularly over the course of her tenancy. This was an area where potable drinking water was regularly purchased.

The landlord issued and submitted into evidence a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant had not paid rent for the months of February, March and April 2015. The tenant confirmed this testimony, concurring that she had not paid rent since December 2014 when she paid rent for both December 2014 and January 2015. The landlord testified that the tenant did not pay the March rent after receiving the 10 Day Notice on March 12, 2015.

The tenant applied to cancel the 10 Day Notice as well as to receive compensation in the amount of \$800.00 from the landlord for restricting a service, specifically water and affecting her right to quiet enjoyment of her residence.

In her testimony, the tenant states that;

- she has not paid rent for February 2015; March 2015; or April 2015;
- the landlord put chemicals in the well water available on the residential premises;

- she smelled paint thinner in the water on several occasions;
- the “people next door” supplied her with water over the course of her tenancy;
- the previous neighbours (not current tenants) also residing on the residential premises would often yell at her, swear and call her names.

The landlord testified that;

- the tenant has not paid rent for February 2015; March 2015; or April 2015;
- he only put water cleansing products in the well;
- the previous neighbours were evicted in an effort to improve the tenant’s living situation but she now has disagreements with other neighbours.

According to the tenant’s testimony, she paid her monthly rent in cash and received receipts from the landlord. She testified that she wishes to vacate this rental premises and move but that she needs to save money before she can do so. She bases her request for \$800.00 in compensation from the landlord on the theory that the landlord is responsible to her to ensure she is not bothered by the neighbours.

Analysis

The tenant testified that she was not provided with potable drinking water by her landlord. Under this particular tenancy agreement relating to a somewhat rural residential tenancy, the landlord specified in the agreement that he is not responsible for the provision of water. This term of the residential tenancy agreement was initialed by both parties. The tenant testified that, over the course of her tenancy, she had always bought her drinking water from her neighbours. I find the documents that she claimed reflect a problematic level of chemicals in the water are unclear with respect to any significant issue and that, regardless, in this particular situation there was a reasonable arrangement with respect to water. The tenant was not without water. She merely had choices as to how she addressed her concerns about the water.

To seek compensation for reduced services, a tenant must show that either the service was a material part of the tenancy or that it was a service agreed by the landlord to be provided as part of the tenancy agreement. The remedy for failure to provide a material service is an application to the Residential Tenancy Branch to apply to reduce rent for the value of that service. In this case, the tenant did not apply for a reduction in rent or for a remedy to the landlord’s lack of provision of a service. The tenant applied for a monetary order for compensation for damage or loss resulting from the tenancy. More crucial to the tenant’s application is the term within the tenancy agreement that states the landlord is not responsible for the provision of water. That term was both clear, on the page of the agreement submitted by the tenant and initialed by both parties to the

agreement. I do not find that term to be too prohibitive for a landlord to impose in this particular situation. The provision of water is a basic provision however in this particular instance, it was merely arranged in a way that the tenant now claims to be dissatisfied with.

Section 67 of the *Act* establishes that if 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. The tenant has applied for a monetary award pursuant to section 67 of the *Act*. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* by the landlord. Once that has been established, the tenant is also responsible to provide evidence that can verify the actual monetary amount of the loss or damage.

While the tenant has provided documentation of testing of the well water on the premises, she has provided no evidence to show that the provision of potable water is a service to be provided by the landlord. The tenancy agreement submitted suggests that the landlord is not responsible for the provision of water during this tenancy. If the landlord were responsible, it would still fall to the tenant to provide proof that she had suffered a loss as a result of a change to the well water or the availability of water at all. The tenant provided no materials that establish she has suffered any monetary or other quantifiable loss. I do not find that the tenant is entitled to receive a monetary award as a result of her claim. She has also, strictly speaking, not applied for a remedy to the reduction in services. Given my findings below, the distinction is not relevant. The tenant's application for compensation as a result of the landlord's failure to provide water is dismissed.

The tenant also testified that her quiet enjoyment of her residence was regularly disturbed by neighbours. Section 28 of the *Act* provides the factors to consider in evaluating a claim with respect to a tenant's right to quiet enjoyment.

28 *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

While the tenant has found her neighbour's actions upsetting, her unsatisfactory interactions with his neighbour are not necessarily subject to intervention by his landlord(s). Residing on a residential premise with neighbours both on and off the same property sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord described taking appropriate steps to ensure the tenant's concerns were addressed. After attempting to mediate between the parties, he evicted the neighbour who was bothering the tenant. I see insufficient evidence to demonstrate that the landlord has failed to take action to follow up on the tenant's concerns about her neighbour. To the contrary, I was provided with undisputed sworn testimony that the landlord took active steps to address the tenant's complaints. I do not find that the tenant is entitled to receive a monetary award as a result of her claims of lack of quiet enjoyment. The tenant's application to be compensated for a lack of quiet enjoyment is dismissed.

Finally, section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." A tenant has a right to deduct all or a portion of the rent under this *Act* only if ordered to do so by an arbitrator. There is no such order allowing the tenant to deduct any or all of her rent.

The tenant failed to pay the March 2015 rent within five days of receiving the 10 Day Notice. The tenant made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. However, the tenant has provided no evidence to contradict the evidence of the landlord that the tenant has failed to pay rent. In fact, the tenant testified that she has paid no rental amount for February 2015, March 2015 and April 2015. The tenant's explanation for unpaid rent relates to a restriction of services as part of her tenancy and an inability to quietly enjoy her residence. I have addressed her claims with respect to those issues. I have dismissed her application with respect to her application for a monetary award. Pursuant to section 26 of the *Act*, even if I found that the tenant's quiet enjoyment or another tenant right had been infringed, that does not allow the tenant to withhold rent. In accordance with section 46(5) of the *Act*, the tenant's failure to pay the outstanding rental amounts within 5 days or to successfully

apply to cancel the notice results in the end of the tenancy. The tenant's application to cancel the notice to end tenancy is dismissed.

Conclusion

The tenant's application to cancel the notice to end tenancy is dismissed without leave to reapply. The tenant's application for a monetary award as a result of damage or loss is dismissed without leave to reapply.

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: April 28, 2015

Residential Tenancy Branch