



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 49, and 55 for landlord's use of the property; and
- b) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant pursuant to the Act for orders as follows:

- c) To cancel a Notice to End Tenancy for landlord's use of the property;
- d) To permit the tenant to change the locks pursuant to section 29;
- e) To order the landlord to make repairs and to provide facilities and services required by law pursuant to sections 27 and 31;
- f) For a rent rebate for disturbance of peaceful enjoyment and loss of facilities and services; and
- g) To recover the filing fee for this application.

SERVICE:

Both parties attended and the tenant agreed they received the Notice to end Tenancy dated May 1, 2015 on May 19, 2015 under their door. It was to be effective June 30, 2015. Both parties agreed they received the respective Applications for Dispute Resolution by registered mail. The effective date on the Notice is automatically corrected to July 31, 2015 pursuant to section 53 of the *Residential Tenancy Act* as a two month Notice to End Tenancy must give a full two month's notice and according to section 49(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant objected that the Notice was not served in accordance with section 88 of the Act. I find that by sliding it under the tenant's door, it was sufficiently served pursuant to my authority under section 7(2)(c) for the purposes of this hearing; as there were disputes about the mail service between the parties, I find this was a reasonable method of service and it did come to the tenant's attention quickly. I find that the tenant was legally served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant was issued a Notice to End Tenancy dated May 1, 2015 for landlord's use of the property. Has the landlord proved on the balance of probabilities that he needs the tenant's unit for occupation by himself or a close family relative and is he entitled to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that he requires permission to change the locks and that the landlord has not provided facilities and services required by law, that he is entitled to a rent rebate and the landlord should be ordered to do repairs? Is the tenant entitled to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on July 1, 2014, a security deposit of \$400 was paid and rent is \$800 inclusive of hydro, laundry and Wi-Fi.

The landlord said he requires the unit for the use of his family as his children who are turning 8 and 10 years old are becoming more involved in many activities and need the increased space. The tenant said the landlord had told them verbally that he was going to do renovations but when he checked with the local authority, no application had been filed. The tenant also said the first Notice to End Tenancy was issued in the incorrect tenant name but he agreed that a new Notice which is in evidence was issued after that and served in May in his correct name. The landlord said there was never a Notice to End Tenancy served for renovations and never a verbal statement about that. The parties agreed there had been no rent paid for June; the tenant said he was awaiting the outcome of this hearing for he is aware of his right to one free month's rent if a section 49 Notice is upheld.

The tenant had many complaints about the landlord and he was very upset and emotional in the hearing. Both tenants were reminded to stay calm and explain their evidence. The tenant claims a rent rebate for loss of their peaceful enjoyment in May 2015. They said the landlord pushed his way into their unit, scared them and they called the Police. The landlord said they invited him to come down for May's rent; he came and tried to explain he was issuing a section 49 Notice to End Tenancy and they became extremely upset and closed the door on his arm. He said there was a little pushing. He said the Police did come and advised him to handle Notices through the Residential Tenancy Branch. The tenant also said that in May, the landlords have been

blasting music beside their door and stomping and laughing in the room above their unit. The landlord said this is all made up since the Police incident but he acknowledges that his kids make noise on Saturday when they are home and his wife does laundry and plays her radio near the tenants' unit. He said they have to live normal lives as well. The tenant also said that the landlord stares at his wife all the time through the window and outside; the landlord denies that and said he is a working man.

The tenant said further that their internet was cut off on May 1 and 2 and is on and off intermittently until yesterday. He said it was consistently on before that. The landlord said he has had problems with the internet and has been contacting the provider about the service without success; he said his children use it a lot and he has to hit the reset button when it goes down. He said there was no technician available for help on May 1 which was a Saturday. He claims a rent rebate for that and for the fact they have had little or no heat during their tenancy.

The landlord said the tenants have a thermostat and it is in floor heating in this house which was built in 1997. He said it is gas heating but his hydro bills have doubled; he thinks maybe the tenants have been turning on the stove and oven to give extra heat and they leave the windows open. He said he warned them that if the hydro continued to escalate, they would have to pay extra. The tenant said the landlord was very aggressive in his demands for \$50 extra for hydro in March and April 2015 but he pointed out that the rent could only be raised once a year with Notice according to sections 42 and 43 of the Act.

In evidence are statements of the parties, Notices to End Tenancy, letters, a USB and registered mail receipt.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

The onus is on the landlord to prove on a balance of probabilities that they need the unit for their own use. I find the landlord's evidence credible that his children are growing and he needs the increased space due to their expanding activities. Although the tenant alleged that the landlord was taking it for renovations, I find insufficient evidence to support this contention and in fact, the tenant's evidence that the local authority said no permits were issued for renovations and it is an illegal suite supports the landlord's credibility that he requires it for the use of his own family. I find that the landlord is

entitled to an Order of Possession. The tenancy is at an end on July 31, 2015 (as corrected). An Order of Possession is issued effective July 31, 2015.

In the hearing, the tenant was advised that they are entitled to one month's free rent only so if they stay to July 31, 2015, they will likely owe another month's rent as they did not pay rent for June but they also have the right to serve a 10 day Notice pursuant to section 50 of the Act.

On the tenant's application, the onus is on them to prove on a balance of probabilities that their peaceful enjoyment was disturbed contrary to section 28 of the Act, that there was an illegal entry by the landlord contrary to section 29 and they lost facilities such as heat and that they are entitled to a rent rebate for this unlawful behaviour of the landlord.

I find the weight of the evidence is that the landlord and/or the landlord's family significantly interfered with their peaceful enjoyment after May 2, 2015. I find the tenants' evidence more credible for they did not allege loss of internet usage or disturbance by loud noises until May 2015 which coincides with the altercation concerning the Notice to End Tenancy. I find the landlord also supported the tenant's evidence when he agreed that on May 2 which was a Saturday, his wife was doing laundry and playing her radio near the tenants' door and his children were engaged in their noisy play pursuits like video games. Although the landlord minimized this disruption as normal living activities, I find it suspicious that this behaviour escalated and was more disturbing in May just after the altercation occurred. I find the tenant's peaceful enjoyment was most probably significantly disturbed in May and his tenancy was devalued by this. I find also that the weight of the evidence is that the landlord began asking for more money for hydro use and this agitated the tenants. Although the landlord did not admit to any demand, I find he did support the tenants' evidence by stating that his hydro bills are grown enormously and he felt it was due to tenant use; he also said that he told them that if it continued, he would have to ask for some costs of this. I find this was a further disturbance of their peaceful enjoyment as an increase in included utilities (classified as rent) is illegal without proper notice and made in less than one year pursuant to sections 42 and 43 of the Act.

For the devaluation of their tenancy and loss of peaceful enjoyment in May 2015, I find the tenants entitled to a rebate of approximately 33% of their rent or \$267.00. For the disturbance of their peaceful enjoyment due to the threatened increase of hydro, I find them entitled to a further 10% rebate or \$80. I find the tenants entitled to recover \$50 filing fee as their claim had some merit.

In respect to the issue of heat, I find insufficient evidence that there was anything wrong with the in floor heating. The tenants had their own thermostat and they provided no professional evidence that it was not working. I dismiss this portion of their claim.

As the tenancy is ending on July 31, 2015, I decline to consider ordering repairs or change of locks. This portion of the tenants' claim is dismissed.

Conclusion:

I find the landlord is entitled to an Order of Possession effective July 31, 2015 (as corrected) and to recover filing fees for this application.

I find the tenant entitled to a rent rebate as calculated below including filing fee. I dismiss the remainder of the tenants' application without leave to reapply.

Calculation of Rent Rebate:

Loss of peaceful enjoyment May 2015	267.00
Loss of peaceful enjoyment due to threat of illegal increase	80.00
Filing fee	50.00
Less filing fee to landlord	-50.00
Total Rent rebate	347.00

I HEREBY ORDER THAT the balance of the tenants' rent owed for June, 2015 is \$453.00 and this must be paid forthwith to the landlord; the tenant has a free month's rent for July 2015 pursuant to section 49 and 50 of the Act.

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: June 17, 2015

Residential Tenancy Branch

