



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, RR, OPR, MNR, FF

Introduction

The hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking orders as follows:

1. To cancel an additional rent increase;
2. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"); and
3. To allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

At the onset of the hearing the tenant disconnected from the telephone conference on two occasions and immediately dialled back into the conference.

During the process of explaining the hearing the tenant was cautioned several times as they were rude, antagonistic, displaying inappropriate behaviour and was disrupting the hearing process. The tenant was warned if they continue to display such behaviour that they may be

excluded from the hearing pursuant to rule 8.7 of the Residential Tenancy Branch Rules of Procedures (the "Rule").

The tenant failed to comply with my direction during the hearing; however, I found it appropriate rather than to exclude the tenant from the hearing, their telephone line was muted, while the other party presented their evidence to ensure the hearing proceeding in a respectful manner.

During the hearing the tenant submitted into evidence a copy of a work agreement that they said was signed by the landlord. The landlord denied signing the document and indicated the tenant is committing fraud. Under the Rule 3.8 at any time during a dispute resolution process the parties must be prepared to supply and original of any document, if requested by the Arbitrator.

After all testimony and evidence was submitted by the parties, I ordered the tenant to provide the original copy of the work agreement to the Residential Tenancy Branch for my consideration. The tenant became argumentative and indicated that they have sent a photocopy, the only copy they would be providing; the tenant then disconnected from the hearing.

As I wanted to ensure the tenant was not having telephone difficulties, I waited on the line for an additional five minutes prior to formally concluding the hearing. At, no time did the tenant redial into the telephone conference. Therefore, I have determined, based on the conduct of the tenant, that they purposely disconnect from the hearing as they did not want to comply with my direction.

Issues to be Decided

Should the additional rent increase be cancelled?

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began in April 2014. Rent in the amount of \$1,100.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The tenant testified that the landlord told them that they would be increasing the rent by \$100.00 per month. The tenant stated that the landlord did not serve them with the proper notice of rent increase.

The landlord acknowledged that they did not provide the tenant with the appropriate rent increase notice and the rent increase has not been collected.

The landlord testified that the tenant was in rent arrears in the amount of \$700.00 and they issued the Notice on April 3, 2015. The landlord stated they personally served the tenant on April 3, 2015.

The tenant acknowledged that the landlord served them in person with the Notice, but could not recall the date. The tenant stated that the Notice is not valid as the landlord has not properly indicated their name.

The landlord testified that when they issued the Notice they did not know the tenant's proper name and they completed the Notice the best they could. The landlord stated that the tenant filed their application for dispute resolution and they were able to obtain the tenant's proper name from the documents.

The landlord testified that the tenant has not paid the outstanding rent. The landlord stated that the rent arrears started in September 2014, when the tenant was unable to pay their gas bill. Rather than have their gas disconnected, the tenant only paid rent in the amount of \$800.00, leaving a shortfall of rent in the amount of \$300.00, according to the landlord. The landlord stated that the tenants said they would pay the outstanding rent as soon as possible; however, the rent remains outstanding.

The landlord testified that the tenant's rent for January 2015 and February 2015, were both short by \$100.00 and March 2015, rent was short by \$200.00. The landlord seeks to recover unpaid rent in the total amount of \$700.00.

The tenant testified that the only reason they did not pay the full amount of rent in September 2014, was because from the beginning of the tenancy, the landlord told them that they would open an account for the utilities in the landlord's name; however, the landlord never did so and they ended up having a large bill, according to the tenants. The tenant stated that they had to contact human resources and they paid the utility bill from their allotted food money.

The tenant testified the rent for January, February and March 2015, was paid because they were entitled to deduct their wages from the rent. The tenant stated that they entered into a written work agreement with the landlord before the tenancy began. Filed in evidence is a copy of a written agreement. Filed in evidence are two witness statements.

The tenant testified that the landlord still owes them the amount of \$320.00 for wages. Filed in evidence is an invoice.

The landlord testified that they never entered into any written work agreement with the tenant. The landlord stated that the document the tenant has filed in evidence was fraudulently created and they contacted the local police department and filed a report.

The landlord testified that the invoice submitted by the tenant is for alleged snow removal in November 2014. The landlord stated that the tenant is just creating documents.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the each party has the burden of proof to prove a violation of the Act by the other party and a corresponding loss.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The landlord acknowledged that they did not comply with the Act, when they sent the tenant a letter increasing the rent. As the landlord has not served the tenant with appropriate notice of rent increase, I find the letter provided by the landlord to the tenant has no force or effect. The landlord must not increase the rent, except in accordance with section 41 of the Act.

The evidence of the tenant was the Notice issued on April 3, 2015, is not valid as their name is not correct.

Although I accept the tenant's names is not correct on the Notice, that was the only name the landlord knew the tenant by and does not automatically void the Notice. Section 68 of the Act, gives me the authority to amended a Notice, when the tenant receiving the Notice, knew or should have known that they were the tenant.

In this case the tenant was served in person and acknowledged that they are the tenant when they submitted their application to dispute the Notice. Therefore, I find it reasonable and appropriate to amend the Notice, issued on April 3, 2015, from "O occupant" to "OC" which is the proper name of the tenant.

In this case, the evidence of the landlord was the tenant was served with the Notice on April 3, 2015, and that date was not disputed by the tenant.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenant had five days to dispute the notice.

Based on the service date of the Notice, which was April 3, 2015. I find the tenant had five days to dispute the Notice, which the last day under the Act to file their application for dispute resolution was April 8, 2015; however, the tenant's application was not filed until April 22, 2015. I find the tenant did make their application within the time permitted under the Act . Therefore, I find the tenant was conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which was April 27, 2015. I find the tenant is now overholding the rental unit.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service of the order on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the tenancy legally ended, I find it not necessary to consider the tenant's application to allow a tenant to reduce rent for repairs. Further, the tenant provided no evidence on this issue.

In this case, the tenant did not pay all rent owed for September 2014, due to an outstanding utility bill. Although the evidence of the tenant was they believed the account was to be in the landlord's name, there is no evidence to support this. Further, the tenant did not deny they are responsible to pay for their own utilities regardless of whose name is on the account. I find the tenant breached the Act, when they failed to pay all rent owed for September 2014, causing losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent for September 2014, in the amount of **\$300.00**.

In this case, the tenant does not deny they made deductions from the January 2015, February 2015, and March 2015, rent payments, as they alleged they have a written agreement allowing the tenant to deduct their wages from the rent. The tenant has submitted a copy of the written agreement, which the landlord indicated the document was falsified by the tenant.

The tenant was ordered to provide a copy of the agreement to the Residential Tenancy Branch for my consideration; however, the tenant became angry and indicated that they have provide a photocopy and that is all that I am entitled to receive, before choosing to disconnect from the hearing. Therefore, due to the unreasonable reaction of the tenant, I accept the landlord's evidence that the document was created by the tenant.

Further, I note on the agreement the landlord's signature is printed which does not match the signature filed on the landlord's application.

Although the tenant has submitted two witness statements alleging that they were present when the landlord made the agreement on May 21, 2014. However, no weight can be given to documents that are dated May 14, 2014, which is prior to the signing of the alleged agreement.

The tenant has also submitted an invoice, which the last date noted was December 2014. The evidence of the tenant was the landlord still owed them the amount of \$320.00 in unpaid wages. However, if I accept the tenant's version that there was an agreement to deduct wages from the rent, which I do not, I find it would not be reasonable for the tenant to deduct the amount of \$100.00 from both January 2015 and February 2015 and \$200.00 from March 2015. Then testify the invoice balance of \$320.00, remains outstanding . I find to make the tenant's version believable they would have simply reduced their rent by the full amount of wages allegedly owed.

Therefore, I accept the landlord's version that the tenant failed to pay all rent owed for January 2015, February 2015 and March 2015. I find the tenant breached the Act, when they failed to pay rent in full and this caused losses to the landlord. I find the landlord is entitled to recover unpaid rent for January 2015, February 2015, and March 2015, in the amount of **\$400.00**.

I find that the landlord has established a total monetary claim of **\$750.00** comprised of the unpaid rent as stated above and the \$50.00 fee paid for this application.

Conclusion

The tenant's application to cancel an addition rent increase is granted. The balance of the tenant's application is dismissed.

The landlord was granted an order of possession and a monetary order in the above noted amount.

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*.

Date: June 4, 2015

Residential Tenancy Branch

