



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, LRE, LAT, RR, FF

Introduction

This hearing dealt with an application by the tenant filed under the *Residential Tenancy Act* (the Act) on April 20, 2015 to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated April 16, 2015, with an effective date of June 30, 2015. Also, the tenant orally reduced their claim seeking to be allowed to reduce rent for repairs or services agreed upon but not provided, and recover the filing fee for this matter.

Both parties attended the hearing and were given full opportunity to present all relevant evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. The landlord was represented by an agent claiming they were a family friend authorized to represent the landlord's interests and that they were in possession of all evidence received by the landlord in this matter. The tenant provided that they sent the landlord all evidence in this matter which they provided to the Branch hearing. The landlord did not advance or provide any document evidence to this matter. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were provided with opportunity to settle their dispute to no avail.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that any Notice issued was a valid Notice issued, in good faith, for valid reasons: legal Notice to End.

Issue(s) to be Decided

Is the Notice to End tenancy valid and issued, in good faith for valid reasons?
Should the Notice to End dated April 16, 2015 be set aside?
Is the tenant entitled to the monetary amounts claimed?

Is the tenant entitled to recover the filing fee?

Background and Evidence

This tenancy started June 01, 2013. The payable monthly rent is \$1100.00. The tenant provided a copy of the prevailing contractual tenancy agreement stipulating that included in the rent is water, heat, kitchen appliances, carpets, window coverings, cablevision / service, free laundry, garbage collection and parking for 2 vehicles.

The tenant submitted a copy of the 2 Month Notice to End. The Notice to End was issued for the following reason;

-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse

The tenant disputes the Notice to End on the basis the Notice to End was claimed by the landlord to have been issued so as their *sister* could occupy the rental unit. The landlord's agent confirmed this intent. The parties were apprised that legal Notice to End in this matter does not include in the above reason that the rental unit will be occupied by the *sister of the landlord*, and that as a result the landlord's Notice could not be upheld as valid Notice, and effectively must be dismissed.

The tenant testified they were solely seeking *monetary relief* for the cost of basic cable - for which they pay each month, but which is included in the tenancy agreement – and compensation to offset their costs related to a septic tank overflow which occurred in the fall of 2014. The tenant did not confirm seeking relief for the balance of items within their application and in the hearing did not address other items within their original application.

The tenant claims that they have been paying for basic cable service since the outset of the tenancy; however, they provided proof that cable service is included in the rent. The tenant provided evidence which they claim shows that basic cable service is being charged to them at \$72.95 per month. The tenant's evidence stipulates this charge is for a "Popular" Channel Package. The tenant seeks recovery of this amount by 24 months. The landlord testified as to why the tenant did not simply reduce the rent by the amount of the basic cable. The tenant claims that they have tried to obtain consent from the landlord to reduce the rent by the claimed amount without resolution and hesitated to reduce the rent in concern that they could be evicted for nonpayment of rent.

The parties agreed that in the fall of 2014 the residential property incurred an overflow

of the septic tank system. The tenant claims that as a result their toilet overflowed and flooded the adjacent surrounding area of the living room and bedroom and further flowed downstairs to the lower tenancy. The tenant testified that the lower tenancy was compensated, but that they have not been. They seek their costs for carpet cleaning and their labour for cleaning and reparation of the toilet overflow in the sum of \$486.00. The tenant provided a receipt for professional carpet cleaning in the amount of \$154.35. The tenant testified that the cleaning, effectively, was for the entire 900 square foot area of the rental unit. The landlord initially disputed the tenant's claim respecting labour to clean the damage to the unit, which amounts to \$339.00 – but ultimately agreed the landlord would pay for the cleanup due to the septic tank problem.

Analysis

Proof rests with the respondent (landlord) to provide evidence that the 2 Month Notice to End was validly issued for the stated reason. The landlord testified it was issued to accommodate the landlord's sister, whom is not a prescribed *family member* within the Act. Therefore, **I Order** that the Notice to End dated April 16, 2015 **is cancelled and of no effect.**

I accept the tenant's evidence respecting their claim for remedial costs associated with a septic tank overflow in fall of 2014. I find that the landlord is responsible for the septic tank system and that costs for failure of the system must be borne by the landlord. I do not find the tenant's claim totalling **\$486.00** is unreasonable given the scope of the result from the overflow. I grant the tenant their claim in the same amount.

I find that the tenant's claim for basic cable service is not what is reflected within their evidence. The tenant's claim is for a *Channel Package* versus *Basic Cable Channels* service, which as a result renders the tenant's claim extravagant in comparison. None the less, I accept that the tenant's claim for recovery of basic cable service costs is valid; therefore, in the interests of both parties, rather than dismissing the tenant's claim *with leave to reapply*, I grant the tenant recovery of \$39.00 per month from the outset of the tenancy to June 2015, in the aggregate sum of **\$975.00**, *without leave to reapply*.

I further **Order** that the tenant may deduct \$39.00 from ongoing rent as of **July 01, 2015**, for the cost of basic cable service.

The tenant is awarded compensation in the amount of \$1461.00. The tenant is further entitled to recover their filing fee of \$50.00 for a total monetary award of **\$1511.00**.

Conclusion

The tenant's application is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues in accordance with the tenancy agreement.

I Order the tenant may deduct **\$1511.00** from any financial obligation owed to the landlord, inclusive of unpaid or future rent, in satisfaction of their award.

I Order that the tenant may deduct \$39.00 from ongoing rent as of **July 01, 2015**.

This Decision is final and binding on both parties.

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 03, 2015

Residential Tenancy Branch

