



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LRE, O, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 25, 2015 ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to section 70;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and his advocate, CD, and the tenant and his legal advocate, AC, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's advocate confirmed that she is the property manager for this rental unit. The landlord confirmed that his advocate had authority to present submissions on his behalf at this hearing. The tenant confirmed that his legal advocate had authority to present submissions on his behalf at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The tenant confirmed receipt of the landlord's 1 Month Notice on May 26, 2015, which the landlord said was posted to the tenant's rental unit door on May 25, 2015. In

accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

Preliminary Issues

At the outset of the hearing, the tenant confirmed that he was withdrawing his application for "other" unspecified remedies. Accordingly, this portion of the tenant's Application is withdrawn.

At the outset of the hearing, the landlord's advocate confirmed that the landlord's 1 Month Notice and 90-day eviction notice, dated April 1, 2015, were withdrawn. The landlord's advocate confirmed that no eviction of the tenant was being pursued as a result of the above notices. Accordingly, the landlord's 1 Month Notice, dated May 25, 2015, and the landlord's 90-day eviction notice, dated April 1, 2015, are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord's advocate testified that this tenancy began on November 28, 2013 and continues to present. Monthly rent in the amount of \$800.00 is payable biweekly on the 1st and 15th days of each month. A security deposit of \$400.00 was paid by the tenant and the landlord continues to retain this deposit.

During the hearing, the tenant amended his monetary claim from \$5,000.00 to \$2,400.00 for a loss of quiet enjoyment at the rental unit. The tenant stated that he is entitled to half a month's rental loss of \$400.00 for a period of 6 months from February to July 2015. The tenant stated that he is entitled to this compensation because the landlord illegally entered his rental unit twice, served him with two eviction notices, and threatened and harassed him.

The tenant stated that the landlord illegally entered his rental unit on two occasions. The tenant indicated that on February 27, 2015, the landlord sent him a text message indicating that he blew a breaker and that he needed to enter the tenant's rental unit to reset it. The tenant sent multiple text messages back to the landlord stating that he wanted to reset the breaker himself and that the landlord did not have to enter his rental unit to do it for him. The tenant agreed that he reset the breaker himself and that the landlord did not enter his rental unit on this occasion. However, the tenant indicated that the landlord insisted on entering his rental unit, as per the text message printouts provided by the tenant, and that this behaviour was harassment. The tenant stated that the landlord placed a 24-hour written notice in his mailbox that same night, in order to enter his rental unit the next day to change the breakers, but the breakers were never changed.

The tenant stated that on June 1, 2015, he left a piece of paper in his rental unit door jam in order to determine whether the landlord was entering his rental unit without his knowledge and without notice. The tenant maintained that when he returned home from work that day, a rent receipt was left in his mailbox and the paper he left inside the door was on the ground outside. The tenant explained that the landlord illegally entered his rental unit because the paper was located far enough inside the door that it had to be opened by someone in order for it to fall on the ground outside. The tenant also maintained that the landlord was the only one that had a key to his rental unit and that the landlord was present because he left a rent receipt outside. The landlord denied entering the tenant's rental unit illegally at any time during this tenancy. The landlord indicated that he is not aware of any paper that the tenant left in the door on June 1, 2015, and stated that he only left a rent receipt in the tenant's mailbox on that date. The landlord's advocate confirmed that she is aware of section 29 of the *Act* and the requirement to provide advanced written notice to the tenant prior to entering his rental unit.

The tenant stated that he has been threatened and harassed by the landlord. The tenant indicated that the landlord and another landlord owner, "landlord O," came to his rental unit on June 5, 2015. Landlord O's name is indicated together with the landlord's name on the 90-day written eviction notice. The tenant stated that he had never met O before this date and that landlord O threatened and tried to intimidate him, telling him to vacate the rental unit immediately. The tenant stated that he advised landlord O that he had disputed the landlord's 1 Month Notice and that this hearing was scheduled. The tenant stated that he called the police and spoke with "Constable G" and advised him about the situation. The tenant indicated that he was advised by Constable G that after speaking with the landlord, the landlord was aware of this hearing and still wanted the

tenant to vacate the rental unit prior to this hearing. The tenant provided a written statement regarding these events, with his Application.

The tenant provided copies of text messages between the parties. The text messages from the tenant to the landlord allege that the landlord removed the tenant's ant traps without permission. The tenant stated that both parties exchanged text messages, where the landlord asked the tenant for marijuana on February 6, 2015 and then accused the tenant of smoking marijuana in his rental unit on March 31, 2015. The tenant stated that he was served with an illegal 90-day eviction notice the next day on April 1, 2015 because of the marijuana allegations. The tenant provided a copy of the 90-day eviction notice, which is not on a Residential Tenancy Branch ("RTB") form. The tenant also provided a copy of the 1 Month Notice that was served upon him by the landlord in May 2015.

The landlord's advocate confirmed that she was hired by the landlord in order to minimize the tension between the parties and assist with effective communication between the landlord and tenant. The landlord's advocate confirmed that she was dealing with the tenant with respect to all tenancy matters. The landlord's advocate testified that she met the tenant on June 11, 2015, when she inspected the property. The landlord's advocate provided a copy of a letter, dated June 11, 2015, introducing herself to the tenant and providing notice of an inspection. Another letter, dated June 17, 2015, from the landlord's advocate to the tenant, advised that she will forward the tenant's concerns to the landlord, outlined the repairs requested by the tenant, and advised the tenant to contact her for anything further regarding this rental unit. The letter also advised the tenant that the landlord was cancelling the eviction letters served to the tenant and asking the tenant to cancel this RTB hearing.

The landlord's advocate stated that she offered the tenant one month's free rent to leave the rental unit in order to resolve the issues between the parties but that the tenant rejected her offer. The tenant stated that he could not afford to move to another place so he was unable to accept the landlord's offer. The tenant indicated that he was anxious when the landlord served him with two eviction notices, one of which was illegal, because he was forced to look for alternative places to live, even though he was unable to find a place.

The tenant also stated that he lost approximately \$200.00 in work wages because he had to file his Application, find a legal advocate, attend this hearing, and attend inspections requested by the landlord. The tenant stated that he missed hours from work and was required to work overtime due to the above issues.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and their advocates, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

Landlord's Right to Enter Rental Unit

The tenant seeks an order to restrict the landlord from entering his rental unit, except between the hours of 4:00 p.m. and 9:00 p.m., any day of the week with prior notice, in accordance with section 29 of the *Act*.

I find that the tenant failed to provide sufficient evidence that the landlord entered his rental unit illegally. The tenant admitted that the landlord did not enter his rental unit during the time of the breaker incident, because the tenant reset the breaker himself. I also find that the tenant failed to prove that anyone entered his rental unit when he placed a paper in his doorway. It is possible that the paper fell outside without someone entering the unit or that someone aside from the landlord gained access to the rental unit. The tenant has no definitive evidence, including eyewitness evidence, that the landlord entered his rental unit during this time.

On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application to obtain an order to suspend or set conditions on the landlord's right to enter the rental unit, without leave to reapply. As the tenant has failed to prove that the landlord entered his rental unit illegally, I see no need to restrict the landlord's rights in this regard. Both parties confirmed that they are aware of the provisions of section 29 of the *Act*, regarding notice to enter the rental unit. These provisions are to be followed with respect to this tenancy.

Monetary Loss

Section 67 of the *Act* establishes that if damage or 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. 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 situation, the tenant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. The tenant must also show that

steps were taken to mitigate or minimize the loss being claimed, as per section 7(2) of the *Act*. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord caused him a loss, which affected his right to quiet enjoyment.

In summary, the tenant must satisfy the following four elements:

1. Proof that the loss exists;
2. Proof that the loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss being claimed.

Section 28 of the *Act* deals with the 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.*

On a balance of probabilities, I find that the tenant has not met his burden of proof to show that the landlord caused him a loss of quiet enjoyment of the rental unit. I find that the landlord attempted to mitigate the tension and conflicting issues between the parties by hiring a property manager, the landlord's advocate, to communicate effectively with the tenant.

I find that the landlord did not cause a loss of quiet enjoyment to the tenant by allegedly entering the tenant's rental unit illegally. As noted above, I found that the tenant failed to provide sufficient evidence that the landlord entered his rental unit illegally. Therefore, I find that the tenant's claim fails on the first ground of the test, as noted above.

The tenant indicated that the landlord's text messages made him anxious and stressed. The tenant stated that the landlord harassed him with text messages relating to marijuana. Regarding the text message on February 6, 2015, the tenant appears to

have responded the next day on February 7, 2015, indicating that he was sleeping when the landlord texted him asking for marijuana. The alleged text message from the landlord reads: "U got any weed? Rolled?" [sic]. The tenant did not provide a copy of his full response to the landlord, indicating only that: "Lol I was sleeping when you texted that. Just woke up to piss and read it. If..." The above text messages appear to be a friendly conversation between the parties, rather than a harassing encounter, which the tenant claims. The tenant responded the next day, yet he claims to have been anxious about the message. The tenant even begins his text message with "lol" which is generally an abbreviation for "laugh out loud." The tenant did not testify regarding the landlord taking his ant traps. Aside from the above, the other text messages were regarding the breaker, which the landlord wanted to reset from inside the tenant's rental unit. As noted above, the tenant reset the breaker himself. I find that the tenant failed to show that the above text messages from the landlord were threatening or harassing, amounting to a loss of quiet enjoyment. Therefore, I find that the tenant's claim fails on the first ground of the test, as noted above.

The tenant stated that he was anxious because of the landlord's eviction notices. The landlord cancelled these notices and indicated this by way of a written letter. The landlord again reiterated at this hearing that the notices were cancelled. The tenant failed to show that the landlord's eviction notices caused him medical loss. The tenant stated that he did not seek medical attention from a medical professional in order to address his stress, anxiety or pre-existing depression, which he said he had from prior to this tenancy. Therefore, I find that the tenant's claim fails on the first ground of the test, as noted above.

The tenant stated that he missed time from work in order to pursue this Application. However, the only hearing-related costs recoverable under section 72 of the *Act*, are for filing fees.

The tenant stated that he lost wages from work in order to attend inspections with the landlord but failed to show how these inspections caused him a loss of quiet enjoyment. Given the landlord's advocate's letter, dated June 17, 2015, following the inspection on June 11, 2015, I do not find that this inspection interfered with the tenant's right to quiet enjoyment. The tenant did not provide any evidence regarding the City inspection because he stated that he would be pursuing this in a future application. Therefore, I find that the tenant's claim fails on the first ground of the test, as noted above. On a balance of probabilities and for the reasons stated above, I dismiss the tenant's application for a monetary order for money owed or for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

As the tenant was mainly unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee for his Application. Accordingly, the tenant must bear the cost of his own filing fee.

Conclusion

The tenant's Application for "other" unspecified remedies is withdrawn.

The landlord's 1 Month Notice, dated May 25, 2015, and the landlord's 90-day eviction notice, dated April 1, 2015, are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The remainder of the tenant's Application 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: July 17, 2015

Residential Tenancy Branch

