



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, RR, FF

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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent to compensate for a reduction in the value of the tenancy agreement, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenant seeks a total rent abatement in the amount of \$300.00 for his loss of quiet enjoyment of the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by TS.

The landlord has limited language skills. I asked the landlord if there was anyone available to assist her with translation either at her location or by telephone. The landlord informed me that she did not have anyone who could translate for her. The tenant's testimony was repeated to the landlord to ensure that she understood. I confirmed with the landlord all components of the proceedings and testimony. I am satisfied that the landlord understood the process and the content of the tenant's testimony.

The tenant testified that he served the landlord with the dispute resolution package on 9 June 2015 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The landlord appeared and did not contest service. On the basis of this evidence, I am satisfied that the landlord was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Scope of Proceedings

At the end of the hearing the tenant indicated he was seeking compensation for the loss of the use of the living room.

Pursuant to paragraph 59(2)(b), an application of dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide the responding party with enough information to know the applicant's case so that the respondent might defend him or herself.

The tenant did not set out this claim in his application. Accordingly, I will not consider it as part of this application. The tenant was advised of this decision at the hearing.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation or tenancy agreement? Is the tenant entitled to a reduction in rent for a reduction in the value of the 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 his filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around it are set out below.

This tenancy began 1 March 2015. Monthly rent is \$480.00 and is due on the first. The parties entered into a written tenancy agreement on 17 February 2015. The tenant rents one room in a house. He has access to a shared kitchen, bathroom and living room area. The tenant does not share the kitchen or bathroom with the landlord.

I was not provided with a copy of the tenancy agreement. The tenant informed me that there is a clause in the tenancy agreement that provides that, except for casual guests, no other person is permitted to occupy the premises.

The tenant testified that his uncle visited from Kazakhstan from 26 May 2015 to 8 June 2015. The tenant provided me with his uncle's arrival ticket. The tenant testified that he informed the landlord that his uncle would be visiting. The tenant testified that the landlord agreed that the uncle could stay.

The tenant testified that on or about 30 May 2015, the landlord delivered a note to the tenant that set out daily and weekly charges for his uncle visiting. The tenant did not pay any additional amounts. The landlord testified that she did demand these amounts as the tenant's uncle was staying in the rental unit. The landlord testified that if someone lives in the house she wants money for their use. The tenant testified that after the delivery of this note, the landlord started acting differently. In particular, the tenant alleges that the landlord would yell at him to leave the house. The tenant testified that he ignored the landlord.

The tenant testified that on 2 June 2015, the landlord came down to the common area of the rental unit and was yelling at the uncle. The tenant testified that the landlord began throwing the tenant's shoes outside of the house. The landlord admits she threw the tenant's shoes out of the house. The tenant testified that he telephoned the police. The police attended at the rental unit. The tenant testified that the police informed the landlord of certain of her obligations under the Act.

The tenant testified that on or about 6 June 2015, he received a note from the landlord:
please you looking some place move my house not good for you live

[as written]

The tenant testified that on or about 8 June 2015, the landlord delivered the 10 Day Notice. The 10 Day Notice was dated 1 June 2015. The landlord testified that she delivered the 10 Day Notice by putting it under the tenant's bedroom door. The 10 Day Notice is not given for any amount of unpaid rent. The 10 Day Notice only sets out the tenant's name. The notation "[tenant] friend visitors in my house 3 weeks".

The landlord testified that she wanted the uncle to leave and that the 10 Day Notice was intended for him. The landlord testified that she did not have the uncle's name and this is why the tenant's name is the only name on the document. The landlord admits that she did not ever clarify the scope of the 10 Day Notice with the tenant or his uncle.

The tenant testified that the landlord would yell at the tenant and his uncle approximately three to four times daily for the duration of the uncle's visit. The tenant testified that the only time the landlord touched his belongings was when she threw the shoes out of the house. The tenant testified that the landlord is selling the residential property. The tenant testified that the landlord posted a notice to his door informing him that his room could be shown at any time. The tenant testified that he told the landlord that he wanted a proper notice that set out the dates and times of entry. The tenant testified that he put a security camera in his room. The tenant testified that to the best of his knowledge the landlord has not entered his room.

The landlord testified that she wanted the uncle out of the house and that the tenant was causing trouble by having the uncle there. The landlord testified that she is very friendly and did not yell at the tenant or his uncle.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The tenant did not have rent arrears at the time the 10 Day Notice was issued. Accordingly, there was no basis under the Act for issuing the 10 Day Notice and it is invalid. The 10 Day Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act. I understand that the tenant intends to provide notice to vacate the rental unit 31 August 2015.

Section 28 of the Act establishes a right to quiet enjoyment, which includes reasonable privacy, freedom from unreasonable disturbance, and use of common areas free from significant interference.

Subsection 5(1) of the Residential Tenancy Regulation (the Regulation) establishes that a landlord must not charge a guest fee, whether or not the guest stays overnight. Further, clause 9 of the schedule to the Regulation (which are the standard terms of all tenancy agreements) sets out that a landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit or charge for their visits. I find, on a balance of probabilities, that the uncle stayed for the period 26 May 2015 to 8 June 2015 or 13 days. I find that this is a reasonable stay as a casual guest and is permitted under the tenancy agreement, the Act, and Regulation. As such, the landlord

was not permitted to try to prevent the uncle from visiting as a guest or to charge any amount for the uncle's visit: any attempt to do so was unlawful.

Subsection 26(3) sets out that a landlord must not prevent or interfere with the tenant's access to the tenant's property. The landlord did not have any right to interfere with the tenant's belongings. When the landlord threw the tenant's shoes out of the house, the landlord interfered with the tenant's right to access his property.

I find, on a balance of probabilities, that landlord's efforts to attempt to charge for the uncle's visit, to remove the uncle through the issuance of an unlawful 10 Day Notice, and interference with the tenant's property constitutes an infringement of the tenant's right to quiet enjoyment pursuant to section 28 of the Act.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement. In this case, I find that as a result of breach of the tenant's right to quiet enjoyment pursuant to section 28 of the Act the value of the tenancy agreement was reduced. Residential Tenancy Policy Guideline, "6. *Right to Quite Enjoyment*" provides me with guidance in determining the amount of the reduction in value. The Policy establishes that I should take into consideration the seriousness of the situation and the length of time over which the situation has persisted.

In this situation, the assessment of damages is not a precise science; it is not even a calculation. The tenant has estimated this loss at \$300.00. The tenant was prevented from otherwise enjoying his tenancy by the landlord's repeated unlawful attempts to interfere with his right to a guest. The tenant set out that the issues were for the duration of the uncle's visit. These interferences were a serious breach of the tenant's right to quiet enjoyment as they went to the core of the tenant's right to possession of the rental unit. As such, I find that the tenancy was devalued by 75% for the duration of the 13 days of the uncle's visit: \$156.00.

Section 29 of the Act addresses a landlord's right to enter a rental unit. It states that a landlord must not enter a rental unit for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of entry or not more than 30 days before the entry; or
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, and the date and time of entry.

The landlord's alleged general notice for showing the rental unit does not comply with the Act as it does not set out the date and time of entry. The tenant testified that the landlord did not actually enter the rental unit. As such, there has not been an actual violation of the provision of section 29 of the Act; however, the landlord is cautioned that she must provide a notice that complies with section 29 of the Act for any future entry.

Filing Fee

As the tenant has been successful in his application, he is entitled to recover his filing fee from the landlord.

Conclusion

The 10 Day Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

The landlord is ordered to comply with the Act regarding entry to the rental unit.

I issue a monetary order in the tenants' favour in the amount of \$206.00 under the following terms:

Item	Amount
Rent Abatement	\$156.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$206.00

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: July 31, 2015

Residential Tenancy Branch

