



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, OPL, OPR, CNL, CNR, MNDC, MNR, MNSD, RR, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* ("the *Act*"). The landlords applied for:

- an Order of Possession for unpaid rent or for landlord's use pursuant to section 55;
- a monetary order for unpaid rent, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- more time to apply for dispute resolution;
- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") pursuant to section 46;
- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("the 2 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties, including Landlord AL and Landlord LL attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

With respect to service of the Notice to End Tenancy in this matter, Landlord LL testified that the tenant was served with the 10 Day Notice by posting it on his rental unit door on June 1, 2015. Pursuant to section 88 and 90 of the *Act*, I find the tenant deemed served

with the 10 Day Notice on June 4, 2015, 3 days after its posting. The tenant acknowledged receipt of this 10 Day Notice. Both parties agreed that they had received the other party's Application for Dispute resolution, attending materials and Notice of Hearing.

Issue(s) to be Decided

Does the tenant require more time to apply for dispute resolution?

Should the landlord's 10 Day Notice be cancelled?

Should the landlord's 2 Month Notice be cancelled?

If either Notice to End Tenancy should not be cancelled, is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent, damage or loss as a result of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award? Or is the tenant entitled to return of the security deposit?

Is the tenant entitled to a monetary award to reflect a rent reduction for repairs or lack of services or loss as a result of this tenancy?

Is either the landlord or the tenant entitled to recover the filing fee for this application from the other party?

Background and Evidence

This tenancy began on October 1, 2014 with a rental amount of \$1350.00 payable on the first of each month. The tenant rents a double wide trailer located in an orchard from the landlord. The landlord testified that he continues to hold a security deposit in the amount of \$675.00 paid by the tenant on or about September 30, 2014. At this hearing, the landlord sought a monetary order in the amount of \$2700.00 as well as an Order of Possession as a result of the issuance of one of two Notices to End Tenancy. The tenant sought to recover \$11,500.00 from the landlord for loss as a result of the tenancy and a rent reduction.

On April 2, 2015, the landlords issued a 2 Month Notice to End Tenancy for the Landlord's Use. The landlord submitted a copy of the 2 Month Notice. Below the effective date on the face of the Notice, the landlord handwrote, "our son, Scott will be moving in May 31, 2015". The landlord did not check any box to indicate a reason for the end of the tenancy. Landlord AL testified that they had sold their property and that they intended to reside with their son in the tenant's rental unit.

On June 1, 2015, the landlords issued a 10 Day Notice for Unpaid Rent. Landlord LL testified that the tenant generally paid his rent on or about the first of each month in cash. She testified that they did not issue receipts for his cash payments. She testified that the tenant paid partial rent in April 2014 in the amount of \$950.00. She testified that, with that partial payment, the tenant indicated that he would leave behind his new washer and dryer when he moved out. Landlord LL testified that the tenant had replaced the washer and dryer in the rental unit without any notice that the landlords' washer and dryer had broken down, a request for repairs or any permission to throw out the old washer and dryer and buy a new set.

Landlord LL testified that the tenant did not pay rent in May, June or July 2015. The tenant testified that he paid partial rent in May. He testified that the landlords had agreed that he would leave the washer and dryer was to impact May rent as when the conversation occurred, April 2014 rent had already been paid. He testified confirming the landlords' that he did not pay rent in June or July 2014.

The tenant's advocate indicated that the tenant has health related issues and that, over the course of January 2015, he was hospitalized for his illness. The landlord's daughter testified as a witness at the hearing. The daughter/witness testified that she was advised by a neighbour of damage at the rental unit property while her parents were out of town. She further testified that she attended to the rental unit property, entering the residence with a police officer that she had contacted. She testified that she witnessed the rental unit in shambles. She testified that there was; blood, mess, holes, etc. The landlords submitted photographs that illustrated the state of the rental unit at that time. The photographs include the police officer who attended to the scene as well as photographs of bloodied items in the home and household items (chairs, tables, etc.) knocked over.

The tenant testified that, during the period of his hospitalization, the landlords and the former tenants of the residence stole significant personal items from the tenant. The tenant testified that his lockbox was also stolen and that all his receipts for these items were inside this lockbox. The tenant was unable to produce any photographs or other evidence with respect to value of the items that he claims were stolen by the landlords. However, he testified that he has now pressed criminal charges against the landlords with respect to this alleged theft.

The tenant also testified that from the start of his tenancy, he had asked the landlords to fix a hole in the floor of his rental unit. He testified that he knew the hole was dangerous and asked repeatedly for repair. He testified that the landlords supplied some wood that did not entirely cover the hole but never repaired it, despite his continued requests. The

tenant testified that recently, he fell through the hole in the floor, injuring himself. The tenant testified that he smashed his jaw and broke two teeth. His advocate referred to the landlord's photographic evidence to show a photograph of the floor that had been, at that time, covered with large, loose sheets of gyproc or drywall.

I note here that only evidence that I found relevant to the applications being considered in this hearing have been reproduced and other testimony that is better suited to another venue has not been reproduced.

The tenant applied requesting additional time to file his application. His advocate submitted that the tenant had a difficult time completing the application in the appropriate timeline because of his health issues. The advocate did not provide specifics of the obstacles faced by the tenant.

Analysis

The primary issue to consider in this dispute resolution hearing is the status of the tenancy. Section 44 of the *Act* lists the ways in which a tenancy may end;

44 (1) A tenancy ends only if one or more of the following applies:

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:
 - (i) section 45 [*tenant's notice*];
 - (ii) section 46 [*landlord's notice: non-payment of rent*];
 - (iii) section 47 [*landlord's notice: cause*];
 - (iv) section 48 [*landlord's notice: end of employment*];
 - (v) section 49 [*landlord's notice: landlord's use of property*];
 - (vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];
 - (vii) section 50 [*tenant may end tenancy early*];
- (b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates or abandons the rental unit;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended.

...(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the

landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The landlords issued a 2 Month Notice to End Tenancy pursuant to section 49 of the *Act* (landlord's use of property) however the landlord failed to complete the Notice to End Tenancy form in the proper manner, only handwriting some information but checking no reason for the tenant to identify as the reason for the end of his tenancy. Furthermore, the effective dates were incorrect in that the landlord is obliged to give two full months' notice of an end to tenancy in the circumstances the landlords intended to rely on. The corrected effective date should have been June 30, 2015. While these errors in isolation might be corrected, I find that these and other apparent errors in the preparation and issuance of the 2 Month Notice culminate to create an invalid 2 Month Notice to End Tenancy. I find that the landlords' 2 Month Notice to End Tenancy is invalid as it was not in the form required by the *Act* and it did not provide the tenant with sufficient justification to end the tenancy.

The landlord also submitted a 10 Day Notice for Unpaid Rent that post-dates the 2 Month Notice. The landlord testified that the tenant was served with the 10 Day Notice by posting it on his rental unit door on June 1, 2015. The tenant was deemed served with the 10 Day Notice on June 4, 2015. The tenant testified that he did not pay full rent in May 2015 or any rent in June and July 2015.

Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent." The tenant had no right or permission to deduct all or a portion of his rent.

The tenant failed to pay the June rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant did not make an application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice but made his application 2 days after the deadline for filing a dispute. The tenant applied requesting additional time to file his application. His advocate submitted that the tenant had a difficult time completing the application in the appropriate timeline because of his health issues but provided no specific obstacles that illustrated how or why he was delayed.

In accordance with section 46(5) of the *Act*, the tenant's failure to either apply to dispute or pay his outstanding rental amount within five days led to the end of his tenancy on the corrected effective date of the 10 Day Notice. In this case, this required the tenant to

vacate the premises by June 14, 2015. As that has not occurred, I find that the landlords are entitled to an Order of Possession as requested. I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy. I find the 10 Day Notice valid and I grant the landlords an Order of Possession dated August 31, 2015.

The landlords has provided sufficient evidence that the tenant has failed to pay rent in full and on time for the months of May, June and July 2014. The tenant has confirmed that the May, June and July 2015 rent remains unpaid. Based on all the evidence at this hearing and considering the testimony of both parties I find that the landlords are entitled to receive an order for unpaid rent in \$2700.00 in unpaid rent.

Landlord LL testified that the landlords continue to hold a \$675.00 security deposit paid by the tenant at the outset of this tenancy. In accordance with section 72(2) of the *Act*, I find that the landlords are entitled to retain the tenant's security deposit in partial satisfaction of the monetary award.

With respect to the tenant's application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement and an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, I find the tenant has provided little to no evidence to support the application for a rent reduction. The tenant has relied on his own sworn testimony that he fell through a hole in the floor and was injured. At this point, the tenant was unable to present evidence in the form of doctor's notes or receipts for dental work to show that he has incurred a cost that is a result of the landlord's failure to fix his floor. He did, however provided uncontested testimony that he fell through the floor and his advocate was able to refer to the landlord's photographs to explain where the hole was located. However, I also note that he was unable at this time to provide evidence to support his submissions that he had repeatedly asked the landlords to fix the floor. The tenant has provided no receipts or decisive testimony illustrating the nature of the repairs he claims to have made at the rental unit.

I also find the tenant has provided insufficient evidence to support a claim that the landlord stole precious items from his residence while he was hospitalized. The tenant stated in his testimony that he has further evidence to support his position and that the evidence has been provided to the authorities. I note that the landlords refused to comment on these allegations during this hearing. The tenant will address this particular matter with the police and I decline to consider his application for compensation in the amount of \$11000.00.

I therefore dismiss the tenant's application for a monetary award as a result of a rent reduction or damage or loss as a result of this tenancy with leave to reapply in all of the

circumstances. I find the tenant is not entitled to recover the filing fee for this application.

As the landlords have been partly successful in their application, I find the landlords are entitled to recover the filing fee for this application.

Conclusion

I dismiss the tenant's application to cancel the 2 Month Notice to End Tenancy.
I dismiss the landlord's application for an Order of Possession for Landlord's Use.

I dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy.
I grant the landlord an Order of Possession dated August 31, 2015.

I issue a monetary order in favour of the landlords as follows;

Item	Amount
Unpaid Rent	\$2700.00
Less Security Deposit	-675.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$2075.00

I dismiss the tenant's application for a monetary award as a result of a rent reduction or damage or loss as a result of this tenancy with leave to reapply. I dismiss the tenant's application to recover the filing fee for this application.

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: August 17, 2015

Residential Tenancy Branch

