



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, DRI, MNDC, ERP, LRE, AAT, PSF

For the landlord – OPR, OPC, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a One Month Notice to End Tenancy for Cause; to dispute an additional rent increase; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities required by law; for an Order to suspend or set conditions on the landlord's right to enter the rental unit; and for an Order to allow access to the unit for the tenant or the tenant's guests. The landlord applied for Order of Possession for unpaid rent or utilities; for an Order of Possession for cause; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

During the hearing the tenant withdrew their application for an Order for the landlord to make emergency repairs for health or safety reasons

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be decided

- Is the tenant entitled to an Order cancelling the One Month Notice to End Tenancy for cause?
- Is the tenant entitled to dispute an additional rent increase?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?
- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?
- 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 an Order to allow access to the unit for the tenant or the tenant's guests?
- Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this month to month tenancy started on August 12, 2014. Rent for this unit was \$800.00 per month. The landlord testified that the rent increased to \$900.00 per month in May, 2015 as the tenant had an additional occupant living in the unit and the tenant agreed to pay an extra \$100.00 per month. The tenant testified that although he had paid the \$900.00 for the rent since May he did not agree to the increase. Rent is due on the first of each month in advance. The tenant paid a security deposit of \$400.00 on July 05, 2014.

The landlord's application

The landlord testified that when the tenancy began it was for two occupants the tenant and his wife. In December, 2014 the tenant's son moved into the unit and the landlord informed the tenant that there will be an additional charge of \$100.00 per month for an extra occupant. This increase did not come into place until May, 2015. The tenant agreed to pay the increased rent of \$900.00 and did so for May, June and July, 2015. In August the tenant only paid \$800.00 and the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on August

04, 2015 in person. This Notice informed the tenant that he had five days to pay his outstanding rent or file an application to dispute the notice or the tenancy would end on August 14, 2015.

The landlord testified that the tenant did not pay the \$100.00 and has not paid rent for September, 2015 of \$900.00. The landlord seeks to recover \$1,000.00 in unpaid rent and requested an Order to keep the security deposit of \$400.00 to offset against this amount. The landlord also seeks to recover the filing fee of \$50.00.

The landlord testified that the tenant was served with a One Month Notice to End Tenancy on July 12, 2015. This Notice was put on the tenant's door and has an effective date of August 15, 2015. The Notice provided two reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
 - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

The landlord testified that the tenant told the landlord that he smokes but told him that he only does this outside, away from the property. The tenant was doing so until recently when the tenant and guests have started to smoke in the shared entrance way of the home. The smoke filters through the vents and comes into the landlord's unit. The landlord has serious concerns about this second hand smoke as he has a 10 month old baby and the landlord has allergies to cigarette smoke. The landlord does not want his family to have to inhale second hand smoke and after speaking to the tenant about this the tenant agreed not to smoke in the entrance; however, the tenant and his guests have continued to do so and this is now seriously jeopardizing the landlord's and his family's health.

The landlord testified that the tenant also invites a lot of guests and family to the unit and his guests have been disturbing the landlord and have woken his baby from her sleep. This noise occurs around two to three times a week often until 11.30 p.m. The landlord testified that the

noise is not significant enough to bother the police over but is significant enough that it disturbs the landlords and his family.

The landlord testified that when the landlord or his son have guests over they park in the landlord's parking spot and they stand and smoke in the entrance way. The landlord's wife finds this quite intimidating and prevents the landlord and his wife doing everyday activities on the property such as yard work.

The landlord seeks to have the One Month Notice upheld and an Order of Possession granted as soon as possible.

The tenant disputed the landlord's claim. The tenant's agent spoke on behalf of the tenant as English is the tenant's second language. The tenant's agent testified that the tenant had informed the landlord at the start of the tenancy that his son would be coming to live in the unit. The tenant did not agree to pay an extra \$100.00 per month but felt he had to do so as he did not want to leave the unit. After speaking to someone in the Residential Tenancy Branch they told the tenant he need only pay \$800.00 per month and so when the 10 Day Notice to End Tenancy was served upon the tenant there was no outstanding rent for August.

The tenant's agent testified that in September, the tenant was away from home and he had the rent money stolen from the unit. As the tenant had overpaid rent by \$300.00 for May, June and July; the landlord can use that overpayment towards September's rent and take the balance from the security deposit and the additional amount can be covered by the amount owed to the tenant for the withdrawal of laundry, internet and cable services and facilities.

The tenant's agent testified that the tenant does not smoke in the entrance way or allow his guests to smoke there. The tenant's agent testified that her brother does not smoke and her father smokes on the roadside. No one would smoke in the entrance as the tenant's guests also have young children. The tenant's agent testified that the tenant or his guests do not make loud noise until 11.00 p.m. and the tenant's agent is aware of this as she is also occasionally present at her father's unit.

The tenant's agent testified that there are two sides to the driveway one is for the tenant to park and the other is for the landlord. The tenant's guests only park on the tenant's side or on the

road opposite the house. Guests do not park in the landlord's parking space. The tenant's agent testified that if the tenant has guests over at night how does this prevent the landlord's wife doing yard work as yard work would not be done at night.

The landlord testified that the tenant's daughter is not at the unit all the time and does not see her father and his guests smoking in the entrance or parking in the landlord's space. The tenant's agent testified that the landlord's wife would not be doing yard work at night; however, the tenant also has guests over in the day time and it is on these occasions when his wife feels to intimidate to do any yard work. The landlord testified that he did not know until December, 2014 that the tenant's son was moving in. the landlord referred to the receipt issued at the start of the tenancy for the security deposit which states \$400.00 paid for renting suite two occupants only. If the tenant did not agree to pay the additional \$100.00 per month in May, June and July he had three months to dispute it and failed to do so.

The tenant's application

The tenant's agent testified that they have given testimony concerning the landlord's reasons given on the One Month Notice and seek to have the Notice cancelled as the reasons given are false.

The tenant's agent testified that the tenant seeks to dispute the additional rent increase as the landlord knew the tenant's son was going to be an occupant in the unit and is not allowed to put up the rent by \$100.00 a month.

The tenant's agent testified that the tenant seeks compensation of \$500.00. This is comprised of \$300.00 for the overpayment of rent for May, June and July and \$200.00 compensation for the loss of the laundry facilities and for cable and internet services. The tenant's agent testified that the landlord withdrew the laundry facilities on July 16, 2015. Prior to this the tenant was allowed to use the laundry room one day a week and then the landlord put a new lock on the door and the tenant's key does not work. On July 21, 2015 the landlord took away the cable and internet service.

The tenant seeks to have the laundry facilities and the internet and cable service restored.

The tenant's agent testified that the landlord showed the unit to a potential renter without providing the proper notice to enter the unit. The tenant was away at the time and only his son was in the unit. The tenant seeks an Order to suspend or set conditions on the landlord's right to enter the rental unit.

The tenant's agent testified that the landlord put up a note while the tenant was away to say that no guests or family members are allowed in the rental unit. The landlord also stopped the tenant's agent going into the unit. The tenant seeks an Order to allow access to the unit for his guests.

The landlord disputed the tenant's claims. The landlord testified that the rent increase was agreed to by the tenant in December and he did start to pay it without disputing it in May.

The landlord testified that the tenant's laundry, internet and cable are still in place. The tenant has been accessing the laundry room once a week and if his key is not working he has not informed the landlord. The tenant still has the landlord's password and Shaw cable box so should be able to access the internet and cable TV.

The landlord testified that the reason he put the note on the tenant's door about guests was because the tenant was out of the country at the time and his son was allowing many guests to come into the unit who were causing disturbances and intimidating the landlord's wife. These guests were also smoking in the entrance way. When the tenant came home he would not speak to the landlord and then proceeded to smoke with his guests in the entrance way. One of the guests swore at the landlord's wife and the landlord called the police who came to the unit and asked the tenant's guest to leave. This incident occurred on July 21, 2015.

The landlord testified that while the tenant was away his son was living in the unit and the landlord wanted to show the unit to a prospective tenant. The landlord asked the tenant's son if he could show the unit and the tenant's son gave the landlord verbal permission to show the unit whenever he wanted to. As verbal permission was given from one of the occupants who is an adult, the landlord did not provide 24 hours written notice.

The tenant's agent cross examined the landlord and asked:

The tenant's agent questions	The landlord's response
Did you say the tenant's son or the tenant's agent's husband smoking in the entrance	No I said their guests did
Why did you not call the police if the tenant or his guests disturbed you	The noise was not at that level but was at the level to wake up the baby
Did you speak to the tenant's son about noise	I had already spoken to the tenant and his son
When did you tell the tenant's son you were going to show the unit	The day after I gave the Notice to End tenancy

The landlord calls his witness TB. The witness testified that he saw the unit advertised and went to view the unit with the landlord. When the landlord was unlocking the door a man came and started yelling saying we could not go into the unit. This man called someone and a lady turned up. The landlord asked the man to come into the unit with us but he said no he would not allow it. The lady came and was yelling and arguing with the landlord and she came into the unit while the witness's wife and children viewed the unit. They decided not to rent it as there were arguments between the landlord and this man and lady.

The tenant' agent cross examined the witness and asked:

The tenant's agent	The witnesses response
When you said the landlord had verbal permission what did he do	The landlord said it was verbal between them. The man called the lady she stepped into the unit with my wife who viewed the unit. The landlord opened the door with his key in front of the man.
When the tenant refused entry the landlord still opened the door	Yes
You said there was an argument	Yes the landlord and lady were arguing. The man turned up the landlord was trying to open the door with a key the landlord said "good now we can show the unit". The man refused and called the lady

The tenant's agent testified that her brother called the police about the landlord's illegal entry and the police said it was a tenancy matter.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. In dealing with the 10 Day Notice I must first take into consideration whether or not the rent increase of \$100.00 a month imposed in May, 2015 was a legal and valid increase in accordance with s.43 of the Act which states:

43 (1) *A landlord may impose a rent increase only up to the amount*

(a) Calculated in accordance with the regulations,

(b) Ordered by the director on an application under subsection (3), or

(c) Agreed to by the tenant in writing.

The landlord testified that the tenant verbally agreed to pay an additional \$100.00 per month when his son moved into the unit. The tenant disputed this and there is no evidence to suggest this agreement was in writing. Consequently, I must consider this increase to be invalid and in noncompliance with s.42 of the Act which states:

42 (1) *A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:*

(a) If the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) If the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Accordingly I find that on the date the 10 Day Notice was issued there was no outstanding rent due and payable to the landlord as the rent should have only been \$800.00 and this amount was paid to the landlord. Therefore in accordance to s. 43(5) of the *Act* which states:

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenants have overpaid rent for May, June and July and are entitled to deduct the amount of \$300.00 from their rent due for September, 2015.

The landlord's application for an Order of Possession based on the 10 Day Notice to End Tenancy is therefore dismissed.

With regard to the landlord's application to recover \$1,000.00 in outstanding rent, I find there is no rent outstanding for August and as the tenants can apply the \$300.00 of overpaid rent to September's rent I find the landlord is entitled to recover \$500.00 in unpaid rent for September. The tenants may not apply the security deposit or any other amounts of compensation they believe they are entitled to, to cover any unpaid rent for a month in which rent is due. The security deposit is an amount held in trust by the landlord until the end of the tenancy and cannot be applied by the tenant to unpaid rent.

With regard to the landlord's application for an Order of Possession for cause; in this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord's testimony has been contradicted by the tenant's agent concerning disturbances, parking and smoking in the entrance way consequently, in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the One Month Notice to End Tenancy is cancelled and the tenancy will continue.

With regard to the tenant's claim for compensation for \$500.00; \$300.00 of this section of the tenant's claim has been dealt with above and has been offset against rent for September. The balance of the claim of \$200.00 is for the loss of the tenant's laundry facilities and cable and internet service. In this matter the tenant has the burden of proof to show that the landlord prevented their use of the laundry room from July 16, 2015 and turned off the tenant's internet and cable use from July 21, 2015. The landlord disputed that the lock has been added or changed and testified that the tenant has continued to use the laundry room once a week as agreed. When one party's testimony contradicts that of the other then it is one person's word against that of the other and the burden of proof has not been met. I therefore dismiss the tenant's claim for compensation of \$200.00 for the loss of a service or facility.

I will caution the landlord to ensure the tenant has use of the laundry room one day a week as originally agreed and ensure the tenant has access to the internet and cable and to investigate and correct any possible cause if this has stopped working.

With regard to the tenant's claim that the landlord entered the unit without proper notice or permission; I am satisfied with the evidence and testimony before me that the landlord did not provide proper 24 hours written notice to the tenant prior to entering the rental unit and there is insufficient evidence to show that the tenant's son gave the landlord verbal permission to enter the unit. In fact the landlord's witness gave testimony that the tenant's son and daughter tried to prevent the landlord from entering the unit; however, the landlord continued to enter and conduct a viewing of the unit. I therefore uphold the tenant's application for an Order to suspend or set conditions on the landlord's right to enter the rental unit.

I hereby Order the landlord to provide the tenant with a 24 hours written notice prior to any entry taking place unless the landlord can show it is an emergency. The landlord must comply with s. 29 (1) (a) (b) (d) (f) and 29(2) of the *Act* which states:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) The purpose for entering, which must be reasonable;

(ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(d) The landlord has an order of the director authorizing the entry;

(e) The tenant has abandoned the rental unit;

(f) An emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

With regard to the tenant's claim for an Order allowing access to the unit for the tenant's guests and family members; I refer the parties to s. 30(1) of the Act which states:

30 (1) *A landlord must not unreasonably restrict access to residential property by*

(a) The tenant of a rental unit that is part of the residential property,
or

(b) A person permitted on the residential property by that tenant.

If the tenant allows his son, other family members and guests on the property the landlord is not entitled to post a notice to restrict access to the unit for the tenants guests. A tenant is entitled to have guests to his unit and may do so without any form of restriction or censorship. The tenant is responsible for the actions of his guests while they remain on the property.

I will caution the tenant to ensure any guests allowed on the property do not disturb the landlord or his family in a manner that could be construed to be unreasonable taking into account that this is a shared house and sound is likely to travel from one unit to the other. The tenant must also ensure that he or his guests do not at any time smoke in the vicinity of the entrance way.

This must be enforced by the tenant and includes any guests of the tenant's son even if the tenant is not present.

If the tenant does not act responsibly concerning his guests the landlord is at liberty to issue and serve the tenant with another One Month Notice to End Tenancy for cause and this could likely jeopardize the tenancy.

As both parties claims have some merit I find the landlord must bear the cost of his filing fee of \$50.00.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the *Act* in the amount of **\$500.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

The landlord's applications for an Order of Possession for unpaid rent and for cause are dismissed without leave to reapply.

As the tenancy is continuing at this time the security deposit must remain in trust held by the landlord until the end of the tenancy and then dealt with under s. 38 of the *Act*. This section of the landlord's claim is dismissed with leave to reapply.

The tenant's application to cancel the One Month Notice is upheld.

The tenant's application to dispute an additional rent increase is upheld. Rent will remain at \$800.00 per month until the first year has ended and then can be increased in accordance with s. 43 of the *Act*.

The tenant's application for compensation for the loss of the laundry facilities and internet and cable services is dismissed with leave to reapply. The tenant's claim to recover an overpayment

of rent is upheld. The amount of \$300.00 has been offset against rent owed for September, 2015.

The tenant's application for an Order for the landlord to suspend or set conditions on the landlord's right to enter the rental unit is upheld and conditions have been set ordering the landlord to comply with s. 29 of the *Act*.

The tenant's application to allow access to the rental unit is upheld, the landlord is ordered to comply with s.30 of the *Act*.

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: September 18, 2015

Residential Tenancy Branch

