



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MT, CNC, CNR, MNDC, RPP, LRE, RR, FF

Introduction

This hearing was scheduled in response to the tenant's application for more time to make an application to cancel a notice to end tenancy / cancellation of a notice to end tenancy for cause / cancellation of a notice to end tenancy for unpaid rent or utilities / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to return the tenant's personal property / an order suspending or setting conditions on the landlord's right to enter the rental unit / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee.

The tenant attended and gave affirmed testimony. The landlord did not appear.

The tenant testified that the application for dispute resolution and the notice of hearing (the "hearing package") was served by way of registered mail. Evidence submitted by the tenant includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the package was "successfully delivered" on September 09, 2015. Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, I find that the landlord has been duly served in accordance with section 89 of the Act which addresses **Special rules for certain documents**.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a 1 room stand-alone building referred to as the "studio."

There is no written tenancy agreement for this tenancy which began around mid-May 2015. The tenant testified that there was a verbal agreement with the landlord to the effect that tenancy would not extend beyond August 31, 2015. Monthly rent of \$700.00 was due and payable in advance on the first day of each month, and a security deposit of \$350.00 was collected. The tenant testified that she paid all rent that was due for May, June and July 2015.

Pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated August 01, 2015. The tenant recalls that the notice was likely served in person on or about August 01, 2015. A copy of the notice was submitted in evidence. Reasons identified on the notice in support of its issuance are as follows:

Tenant is repeatedly late paying rent

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The tenant filed an application to dispute the notice on August 11, 2015. The application was later amended on August 19, 2015.

Arising from rent of \$700.00 and utilities which were unpaid when due on August 01, 2015, pursuant to section 46 of the Act which addresses **Landlord's notice: non-payment of rent**, the landlord issued a 10 day notice to end tenancy dated August 02, 2015. The tenant recalls that this notice was also likely served in person on or about August 02, 2015. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is August 12, 2015. Subsequently, the tenant filed an application to dispute the notice on August 11, 2015. Thereafter, the application was amended on August 19, 2015. The tenant testified that she made no further payment toward rent following issuance of the 10 day notice.

The tenant testified that when she returned to the unit on August 14, 2015, she found that the unit was locked, and that all of her possession had been removed from the unit and "piled in the landlord's open carport." The tenant then undertook to find storage for her possessions, and to find alternate accommodation for herself.

As the tenant has now vacated the unit, I consider that the following aspects of her application are withdrawn:

- more time to make an application to cancel a notice to end tenancy
- cancellation of a notice to end tenancy for cause
- cancellation of a notice to end tenancy for unpaid rent or utilities
- an order instructing the landlord to return the tenant's personal property
- an order suspending or setting conditions on the landlord's right to enter the rental unit

Analysis

Based on the documentary evidence and the affirmed / undisputed testimony of the tenant, the remaining aspects of the tenant's application and my related findings are set out below.

\$50.00: *reimbursement of excess hydro payment*

The tenant testified that she paid \$100.00 to the landlord for hydro before actually sighting a hydro bill. Later, when she saw the hydro bill, she determined that the amount due was limited to \$50.29. Accordingly, the tenant seeks reimbursement of what she considers was an overpayment of approximately \$50.00.

In the absence in evidence of a written tenancy agreement, or a receipt issued by the landlord for what the tenant claims was a payment of \$100.00, or a hydro bill, this aspect of the application must be dismissed.

\$209.86: *rental of storage units for personal possessions*

In the absence of any evidence that the landlord had obtained proper authority to enter the unit and remove the tenant's personal possessions, and in view of the documentary evidence submitted by the tenant which includes receipts for costs incurred for storage, I find that the tenant has established entitlement to the full amount claimed.

\$200.00: *cabin rental*

While I find that the tenant had improperly been locked out of the rental unit, and her personal possessions improperly removed, she acknowledges that she paid no rent to the landlord for August 2015. Further, there is no receipt in evidence for the cost of

alternate accommodation claimed by the tenant. In the result, this aspect of the application is hereby dismissed.

\$260.00: moving personal possessions

I find that the costs incurred by the tenant for moving are incidental to the way in which the tenancy came to an end. Further, there are no receipts in evidence to support the cost claimed. Accordingly, this aspect of the application is hereby dismissed.

\$350.00: 6 week loss of enjoyment of property from lack of hot water & kitchen sink

In the absence of any documentary evidence of formal contact between the parties in relation to this matter during the term of tenancy, this aspect of the application must be dismissed.

\$500.00: breach of right to quiet enjoyment arising from landlord's alleged harassment, unauthorized entry to unit and eviction, damage to personal property, stress

The attention of the parties is drawn to the following sections of the Act:

Section 28: **Protection of tenant's right to quiet enjoyment**

Section 29: **Landlord's right to enter rental unit restricted**

Section 44: **How a tenancy ends**

Section 55: **Order of possession for the landlord**

Section 57: **What happens if a tenant does not leave when tenancy ended**

Notwithstanding the landlord's issuance of 2 separate notices to end tenancy (1 of them arising from unpaid rent), there is no evidence that the landlord gave proper written notice of her intent to enter the unit, and there is no evidence that the landlord obtained an order of possession or a writ of possession which may have led to authorized removal of the tenant and / or her personal possessions from the unit. In the result, I find that the tenant has established entitlement to compensation arising broadly from a breach to the right to quiet enjoyment in the limited amount of **\$300.00**.

\$50.00: filing fee

As the tenant has achieved some success with the principal aspects of her application, I find that she has established entitlement to recovery of the full filing fee.

Total entitlement: \$559.86 (\$209.86 + \$300.00 + \$50.00)

Finally, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**. In part, this section provides that within 15 days after the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security

deposit, or file an application for dispute resolution. If the landlord does neither, section 38(6) of the Act provides that the landlord may not make a claim against the security deposit, and must pay the tenant double the amount of the security deposit.

Following from the above, at such time as the tenant provides the landlord in writing with her forwarding address and requests the return of her security deposit, the application of section 38 of the Act commences in the circumstances of this dispute.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$559.86**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 26, 2015

Residential Tenancy Branch

