



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, ERP, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

The tenant, E.B. (the tenant) attended the hearing by conference call and gave undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on October 7, 2015. The tenant provided in her direct testimony the Canada Post Customer Receipt Tracking number as confirmation of service. Based upon the undisputed affirmed testimony of the tenant, I accept that the landlord was properly served with the notice of hearing package and the submitted documentary evidence as per sections 88 and 89 of the Act. The landlord is deemed to have received the notice of hearing package and the submitted documentary evidence 5 days later as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to a monetary order for compensation for damage or loss, for the cost of emergency repairs and recovery of the filing fee?

Background and Evidence

The tenant provided undisputed affirmed testimony that she received the 1 Month Notice dated September 30, 2015 in person on the same date from the landlord. The 1 Month Notice displays an effective end of tenancy date of October 31, 2015. The 1 Month Notice set out that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk; or
- the tenant has caused extraordinary damage to the unit.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenants provided written submissions stating,

Eviction Notice given without sufficient time given to clean house and yard. Rent has been paid more times in advance than paid late. Emergency Electrical Repair done April 5, 2015. Have not been reimbursed to date.

The tenant stated that on April 5, 2015 a power outage occurred during the long weekend. The tenant stated that she was unable to contact the landlord, so she asked the basement tenant to contact the landlord and notify him of the electrical issue. The tenant stated that after waiting, she called an electrician to attend. The tenant stated that the electrician notified her that the electrical wires in the panel had been pulled out. The electrician repaired the panel and restored power. The tenant stated that she incurred a \$480.00 cost to have the electrician attend and repair the electrical issues. The tenant stated that the landlord contacted her the next day to notify her that his father-in-law would attend to look at the electrical panel. The tenant notified the landlord that an electrician had already attended and repaired the issue. The landlord stated that he had not authorized the electrician.

The tenant seeks an order to cancel the 1 Month Notice dated September 30, 2015, a monetary claim of \$480.00 for the cost of emergency repairs (electrician) and recovery of her filing fee.

Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

I accept the undisputed evidence of the tenant and find that the landlord has properly served the tenant with the 1 Month Notice dated September 30, 2015 in person on the same date.

In this case, the landlord failed to attend the hearing and provide any details for his reasons for cause on the 1 Month Notice dated September 30, 2015. On this basis, I find that the landlord has failed to meet his burden. The 1 Month Notice dated September 30, 2015 is set aside and the tenancy shall continue.

Section 33 of the Act describes “emergency repairs” as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

If a tenant has attempted unsuccessfully to have the landlord complete emergency repairs, subsection 33(5) of the Act requires a landlord to reimburse a tenant for emergency repairs if, the tenant claims reimbursement from the landlord and provides the landlord a written account of the emergency repairs accompanied by receipts for the amounts claimed. If the landlord does not reimburse the tenant, then the tenant may deduct the amount from rent or otherwise recover the amount (Act, s. 33(7)).

In this case it is clear based upon the undisputed affirmed testimony of the tenant that the emergency repairs referred to is for the electrical systems. The tenant provided undisputed affirmed testimony that an attempt was made to contact the landlord, but was unsuccessful. The landlord returned her call the next day notifying her that his father in law would attend to “look at it”. The tenant claimed reimbursement from the landlord who has refused stating that he did not authorize the emergency repair of the electrical system. On this basis, I find that the tenant properly attempted to contact the landlord to make emergency repairs to the electrical system, but was unsuccessful in

contacting the landlord as per section 33 of the Act. The tenant did not provide any invoice or receipts. I find that the tenant is entitled to recover the \$480.00 in emergency repairs for the cost of the electrician.

As the tenant has been successful in her application, I award the recovery of the \$50.00 filing fee to the tenant.

Conclusion

The landlord's 1 Month Notice dated September 30, 2015 is set aside. The tenancy shall continue.

The tenant is awarded a monetary order for \$530.00. This order must be served upon the landlord. Should the landlord fail to comply with this order, the 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2015

Residential Tenancy Branch

