



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC CNC MNDC RR FF

Introduction:

Both parties filed Applications and attended the hearing. The tenant agreed he was served the One Month Notice to End Tenancy for cause which is dated May 7, to be effective June 10th, 2016. The effective date on the Notice is automatically corrected to June 30, 2016 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. Both parties confirmed personal service of the Applications for Dispute Resolution. I find that they were legally served with the documents according to sections 88 and 89 of the Act. The landlord's agent acts for him as the landlord is out of the country. In the Decision, the agent is referred to as 'the landlord'.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause;
- b) A Monetary Order for unpaid rent pursuant to sections 46 and 67;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies to cancel the Notice to End Tenancy for cause, to dispute an unlawful rent increase, to order the landlord to comply with the Act and for authorization to change the locks. In an amended Application filed June 7, 2016, the tenant also applies for a \$1500 refund of rent for November, December 2015 and April 2016.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession? Has the landlord proved that rent is owed and the amount? Are they entitled to recover the filing fee?

Or is the tenant entitled to any relief? Has the tenant proved on the balance of probabilities that the landlord unlawfully increased his rent contrary to section 43 of the Act, that he illegally entered the unit and that he requires authorization to change his locks? Has the tenant proved entitlement to a refund or rebate of rent and if so, in what amount?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenant commenced living in the premises in June 2014, no security deposit was paid and rent is currently \$500 a month. It is undisputed that the tenant did not pay rent for January to June 2016 but made one payment on April 18, 2016. The landlord served the one month Notice to End Tenancy for the cause of repeated late payment of rent.

The situation was described by both parties. This home is 'off the grid' with an electrical system that uses and moves automatically between solar, water turbine and generator. There is a house, cabin and workshop and the tenancy was for use of the house and to run the generator when needed. The landlord said the rent was only \$500 a month because the tenant could service the generator with diesel fuel, filters and oil when needed. This might be once a month as the landlord said the system worked smoothly. He said the system was running a bit erratically in October 2015 and he installed a new \$400 control board. The tenant told him of problems again on January 1, 2016 and the landlord said he went over and cleared the air filters and showed the tenant again how to keep them clean. He also hired a Professional to come fix the generator system. They were unable to start it manually but he said he had shown the tenant a number of times how to do this.

The water pump failed in January 2016 but the landlord said the tenant did not inform him. A neighbour who shares the pump informed the landlord on February 1, 2016 and he had a new submersible pump installed on February 10, 2016. He said if the tenant had informed him earlier, it would have been installed in January. The tenant said the landlord was out of the country and did not leave a contact number. The neighbour landowner finally contacted the landlord for him. The landlord said the tenant said he should not have to pay rent because of the fluctuating power but he contended the tenant was never out of power for he had given him a backup generator. The landlord agreed that he had told the tenant that he would let the rent slide for January and February if he paid up all the rent until April but the tenant has not done that so that agreement is void.

The tenant said his case rests mainly on his timeline and emails. The emails were the main communications with the landlord. The tenant notes on October 18, 2016 the first text about the circuit board. He said it was sparking and melting so he could not safely use the generator. Then the landlord left and left no contact number so he communicated through the other landowner. The landlord said the timeline of events supplied by the tenant is mainly accurate but the tenant has failed to show that he attended in person within 24 hours to handle problems. He emphasized he had guided the tenant for one and one half years on how the system worked. He said the timeline also failed to note that the system was not designed to run electric heaters so the tenant could go and leave the premises unattended. The home was designed to be heated by a wood stove and the tenant did not leave in enough wood for the winter. The landlord is disabled and out of the country and his cousin as agent looks after the premises.

The tenant said there was an electric heater in the house and they were not told it shouldn't be used. He said he had lots of wood for the winter. He said the tenancy arrangement did not obligate him to maintain the landlord's equipment but he did offer voluntary help when the landlord was over doing jobs. He said it is false that the landlord came right away to attend to problems. Sometimes, it was two months before the landlord responded to an email report of a problem. He said he installed the circuit board. The female tenant said they would never agree to be responsible for the maintenance of facilities, they do not have the ability and the Act requires the landlord to maintain the premises.

In evidence is the Notice to End Tenancy, statements of the parties, a letter dated May 27, 2016 from the landlord outlining the maintenance responsibility of the tenant for the generator, and a timeline and emails supplied by the tenant.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Order of Possession

I find that the landlord is entitled to an Order of Possession. Whether or not the landlord agreed to let the January and February 2016 rent 'slide', I find the weight of the evidence is that the tenant has been repeatedly late in paying rent as they paid no rent for March, paid it late for April on the 18th and paid no rent for May. Also, the bank statement in evidence shows cash payment of \$500 to the landlord's account on October 7, 2015 and on November 16, 2015. I find the landlord has satisfied the onus of proving on a balance of probabilities that the tenant has been repeatedly late in paying rent. I find the tenancy is at an end on June 30, 2016 (as corrected). I find the landlord entitled to an Order of Possession effective on the corrected date of June 30, 2016.

Monetary Order:

I find the landlord claims a monetary order for unpaid rent from January to June 2016, less \$500 paid in April 2016 and some rebates as described below. The tenant quoted many sections of the Act and said the landlord said there was no tenancy and then tried to increase his rent illegally to \$750 a month. An email of the landlord supports the tenant's credibility. I find section 1 of the Act provides a tenancy agreement may be written, or oral, express or implied. I find this was an oral tenancy agreement and the rent may not be increased except in accordance with section 43, that is once a year to the legislated limit (2.9% in 2016) and only after three months notice in the approved form which is obtainable on the Residential Tenancy Branch website. However, I find this is a moot point now as the tenancy is ended on June 30, 2016.

In the matter of compensation and rent owing, as this is an oral tenancy agreement with conflicting evidence of the terms, I find each party bears the onus of proof on a balance of

probabilities of any term that favours them. Both parties agreed that the tenant timeline and emails were basically accurate so I rely heavily on them for evidence. I find there is conflicting evidence on the duty of maintenance of the generator on which the electrical system sometimes depended. While the landlord claimed it was the tenant's responsibility and that was why the rent was low, I find insufficient evidence to support his statements. I find the tenant voluntarily offered his help from time to time to keep the electrical system working. However, I find section 32 of the Act requires the landlord to maintain the property.

Section 7 of the Act provides:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

Did this landlord by act or neglect violate the Act by not consistently maintaining the property as required by section 32 of the Act? Based on the tenant timeline which the landlord agreed was fairly accurate, I considered the evidence of the landlord's actions. I find there were problems with the system in October 2015 and the landlord responded by coming over and working on it. The tenant told the landlord by email on October 28, 2015 that it was working okay on manual. Although the tenant notes the manual operation restricted his ability to leave the house and he had increased costs to run the generator, I find there is no record of him complaining to the landlord about this or asking for a change or reimbursement for costs at the time. In November, the tenant states he was doing some work for a client of the landlord and it was agreed the hours he worked at \$40 an hour would be advance payment of the rent for December 2015. He states he told the landlord of electrical problems and taste of water. No further problems are noted in November.

December 16, 2015, the tenant texted that the generator issue appeared to be getting worse. In his timeline, he states this impacted his ability to work at home as the power kept cutting out

and he was unable to work at the client's house due to the generator issues (email December 23, 2015). He notes his laundry facilities were down because of this. He emailed the landlord about the problems on December 23, 2015 and the landlord said he would be over soon. The landlord attended and thought the system needed a new control board and said he would order one. Meanwhile he brought the tenant a back up generator, connected it to the system and gave him gasoline and permission to get more from his (the landlord's) home as he lived nearby. On December 24, 2015, the landlord texts he has ordered the new control board.

On January 2, 2016, the board arrived and the tenant installed it without issues. However he texts the landlord there are problems with starting it. On January 3, 2016, the landlord made a suggestion, the tenant tried it and it worked but the tenant notes there are issues with the voltage. The landlord got a professional involved and he attended on January 7, 2016. The tenant asks how to winterize the place and the landlord tells him by email. Meanwhile the generator costs were mounting as the water supply had problems.

Based on the facts as noted above, I find the landlord did not by act or neglect violate his obligations under the Act until January 2016 (as considered below). I find there were a lot of problems with this unique system of supplying electricity but I find the landlord responded promptly to the tenant's complaints and diligently tried to repair. I find the tenant lived in the home at a very low rent and had the use of most of the facilities most of the time until January 28, 2016. I find he is not entitled to a refund of rent for November and December 2015. I decline to consider his wages for labour as he did not raise this at the hearing, did not make a claim for them on his application and there is insufficient evidence that this bargain was not met.

Beginning January 20, 2016, the difficulty of getting water is noted and on January 28, 2016, the pump failed completely. The tenant informed a neighbour landowner who also depended on the pump and he vacated the home temporarily. The tenant states there was no communication from the landlord or agents from February 10 to March 25, 2016 and no water until March 25, 2016. Although I find the landlord was not informed of the failure of the water pump in January 2016, I find the weight of the evidence is that he left the country without providing a contact number for the tenant for emergency repairs as required by section 33 of the Act. Therefore, he did not mitigate any losses as required by section 7 of the Act. I find the landlord not entitled to rent for January 2016. Since the evidence in the hearing was that the landlord received rent for January (credited from the payment on April 18, 2016), I find the tenant entitled to a refund or credit of rent for January 2016. I find the new water pump was installed on February 10, 2016 but the power problems continued until March 25, 2016 according to the timeline. The email note on February 10, 2016 states the landlord said the tenant could live there without power. The timeline shows no further contact from the landlord until March 25, 2016 and on that date the inverter (for power) was indicated as up and running. I find the house was not suitable for occupation again until March 25, 2016 as it had intermittent water and no power so I find the landlord not entitled to rent for February and part of March up to March 25, 2016.

Pursuant to section 26 of the Act, I find the tenant must pay rent when due whether or not the landlord fulfills his obligations under the Act. I find the tenant responsible for rent from March 25, 2016 until June 30, 2016 when his tenancy is ended (that is \$500 x 3 + \$96.77 for 6 days in March less \$500 paid late in April). I find the landlord entitled to a monetary order for \$1096.77.

In respect to the tenant claiming various infractions of the Act by the landlord, I find the landlord's letter dated May 27, 2016 was a negotiation stating a proposal for a continuing tenancy, not a rent increase. No security deposit was paid, no Notice of Rent Increase was served and no increased rent was demanded in a Notice to End Tenancy. I decline to adjudicate on events that did not happen and were statements made in process of negotiation. I dismiss this portion of the tenant's claim. I find insufficient evidence to support the tenant's allegation that the landlord said he did not have to pay rent for February and March 2016. I find the letter of the landlord dated May 27, 2016 states clearly that rent is due for those months and the landlord in the hearing said he had verbally agreed that he might let those two months 'slide' if the tenant paid up what was owed. However, the tenant did not pay and did not accept his offer. I find the tenant cannot rely on an offer that he did not accept or indicate acceptance by paying the outstanding rent. I dismiss this portion of his claim but I find the weight of the evidence as indicated above shows entitlement to some rebates for those months.

In respect to the tenant's other claims, regarding no written tenancy agreement, I find the Act provides that a tenancy may be oral or implied as stated earlier. In respect to the landlord's illegal entry contrary to section 29 of the Act, I find there were some incidents of illegal entry without notice between March 25 and April 1, 2016. I find the tenant entitled to a rent credit of \$70 for these breaches of section 29 of the Act. I find also the tenant lost some laundry facilities while there were generator and water problems as noted in his timeline in the fall. I find him entitled to \$40 a month rent rebate between November 2015 and December 2015 for a total of \$80 for loss of facilities. A rebate is not calculated for January, February and March since the tenant has been rebated most of the rent for those months already in the calculation of rent owed to the landlord.

Conclusion:

I find the landlord is entitled to an Order of Possession effective June 30, 2016 and a monetary order as calculated below. I find the landlord is entitled to recover filing fees paid for this application.

I find the tenant entitled to rebates of rent owing for the reasons stated above. The rebates/deductions are calculated below. I dismiss his claims for further rebates or free rent. I find he is also entitled to recover his filing fees as his application had merit.

Calculation of Monetary Award:

Rent arrears as calculated above	\$1096.77
Filing fee to landlord	100.00
Rebate allowed for breaches of s. 29 of the Act	-70.00

Rebate for intermittent loss of laundry and water	-80.00
Filing fee to tenant	-100.00
Total Monetary Order to Landlord	\$946.77

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: June 24, 2016

Residential Tenancy Branch