



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnc, cnr, olc, lre, mndc, ff, mnr, opc, opr

Introduction

The tenant has applied for an order to cancel a 10 Day Notice to End Tenancy, an order to cancel a One Month Notice to End Tenancy, an order to set conditions or suspend the landlord's right to enter the premises, and a monetary order as against the landlord related to the wrongful entry, and a failure of the landlord to provide him one month of free rent upon selling the home.

The landlord applies for an order of possession based upon each of the two Notices referenced above, and a monetary related to unpaid rent for July.

Both parties provided written evidence in advance of the hearing, and both parties were represented and provided oral testimony at the hearing, all of which has been considered in this decision.

At the hearing, the tenant confirmed that he had vacated the premises prior to the hearing. The claims to cancel the subject Notices ending the tenancy, and the claims for an Order of Possession have therefore become moot, and are all dismissed. The claim to set conditions on the landlord's right of entry is similarly moot, and is dismissed. My decision therefore addresses only the monetary claims of the parties.

Issue(s) to be decided

1. Has the tenant proven entitlement to compensation from the landlord related to the landlord's wrongful entry into the rental unit?
2. Has the landlord proven entitlement to compensation from the tenant for unpaid rent for July?

Background and Evidence

A tenancy agreement for a fixed term tenancy was entered into effective November 15, 2015, to end on or about October 31, 2016. Monthly rent was \$1,900.00, due and payable on the 1st day of each month. A security deposit of \$950.00 was paid.

The tenant applies for compensation of \$3,900.00 from the landlord. He alleges that he is entitled to a portion of this compensation because the landlord listed the premises for

sale, resulting in numerous occasions of entry by the landlord or his agent to show the premises. The landlord did not always give the proper notice to the tenant for such showings. There were 3 occasions when the landlord tried to enter without having given notice, but entry was denied by the tenant. In total there were about 7 instances in which the landlord or his agent made or attempted entry without notice to the tenant, or permission from the tenant. The tenant alleges that as a result of these occasions of improper entry (or attempted entry), he was unable to work and suffered a monetary loss of \$500 per day for 4 days for such loss, representing his loss of income for each of these days. He alleges he lost further time from work due to having to prepare for and attend this hearing. The tenant also contends that he should have been provided a 2 Month Notice to End Tenancy as a result of the sale of the premises, and be entitled to the associated compensation equal to one month of rent.

The landlord replies that there was initially a good relationship with the tenant, and issues about entry were dealt with through text message exchanges. Once communications began to break down, notices for entry were posted as required. The tenant was never present for any of these entries.

The landlord submits that a 2 Month Notice was never given, although the landlord had planned to give one after a sale of the home was confirmed. Before that occurred, however, the landlord gave a 10 day Notice in June when June's rent was late, and again on July 4 as July's rent was not paid. The landlord also served the tenant with a One Month Notice on July 4, as a result of the tenant being repeatedly late with rent (including in April, May and June). The landlord submits that the tenant therefore was never entitled to a free month's rent, as no 2 Month Notice was ever given or required.

As no rent for July was paid by the tenant, the landlord claims \$1,900.00 from the tenant. The tenant replies that he left the premises on July 10 pursuant to the landlord's 10 Day Notice, and also because he could no longer tolerate the landlord's conduct towards him. The tenant testified he tried to call the landlord to advise he had vacated the premises, and left text messages for the landlord, and voice mail messages for his agent. The managing broker subsequently advised him that a walk through was needed, and the tenant then asked for a date.

The landlord contends the tenant was still present in August, because he could hear the tenant's dog barking inside. The tenant replies that his dog is deaf and doesn't bark.

Analysis

As noted in Policy Guideline 7, a tenant has a right to quiet enjoyment and peaceful occupation of the premises, while a landlord has the right to enter under certain

conditions, as set out in section 25 of the Residential Tenancy Act. For present purposes, the Act requires that a landlord must not enter a rental unit in respect of which the tenant has a right to possession unless the tenant gives permission at the time of entry or not more than 30 days before the time of entry, or unless the landlord gives the tenant written notice not less than 24 hours, and not more than 30 days before the time of entry.

I accept the tenant's testimony that there were about 7 instances in which the landlord or his agent made or attempted entry without notice to the tenant, or permission from the tenant. I consider this number of instances to a substantial interference with the tenant's use and enjoyment of the property, and that the tenant is entitled to be awarded damages for such unlawful entry. The compensation or loss suggested by the tenant is not supported by sufficient evidence however. The tenant has not provided any evidentiary support from his employer to demonstrate the amount of work time actual missed, or the value of any such work. The time spent to prepare for the tenant's claim, and attend the hearing would have been spent by the tenant in any event, given that the tenant's claim was also to dispute the notices ending the tenancy, and for his claim related to a month of free rent.

While not having proven a claim for loss of employment income, the tenant has a valid claim for loss of quiet enjoyment, which is a contractual claim of a breach of an implied term of the tenancy agreement. The remedy must therefore be related to the loss of value suffered as related to the tenancy itself. Accepting the tenant's testimony that the interference affected 4 work days, compensation equal to a rebate of rent for 4 days is appropriate. This amounts to \$245.16 ($\$1,900.00 \times 4/31$) awarded to the tenant. As the tenant is partially successful with his claim, he is also entitled to recover his \$100.00 filing fee from the landlord. The total sum awarded to the tenant is \$345.16.

The tenant has not proven an entitled to compensation of \$1,900.00 (equal to one month rent). A 2 Month Notice was never given to the tenant to trigger an entitlement to this compensation. It is true that the landlord was attempting to sell the house, but the landlord was not in a position to issue a 2 Month Notice until such time as a sale was confirmed in writing, and the purchaser had given notice to the landlord that vacant possession was required. I accept the landlord's evidence that prior to such conditions crystalizing, the tenant had already given cause to end the tenancy as a result of late rent payment in April, May and June. The claim for \$1,900.00 by the tenant is therefore dismissed.

The landlord claims rent for the month of July. I accept that this tenancy ended on July 10, when the tenant vacated the premises pursuant to the landlord's 10 Day Notice, and

advised the landlord of same by way of text messages and voice messages. Accordingly, I find that the landlord's right to compensation for July rent is limited to the tenant's 10 day possession period. This amounts to \$612.90 ($\$1,900 \times 10/31$) awarded to the landlord. As the landlord is partially successful with his claim, he is also entitled to recover his \$100.00 filing fee from the tenant. The total sum awarded to the landlord is \$712.90.

As both parties are granted an award, an offsetting of one award from the other results in a net balance owed to the landlord by the tenant of \$367.74 ($\$712.90 - \345.16).

Conclusion

Both parties are successful in part with their claims. The net result is that the tenant must pay the landlord the sum of \$367.74. A monetary order is issued to the landlord in this amount.

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, 2016

Residential Tenancy Branch