



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, AS, LAT, LRE, OPT, OLC, PSF, MNDC, MNSD, RP, RR

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 pursuant to section 47; a monetary order for compensation under the *Act*, regulation or tenancy agreement pursuant to section 67; authorization to obtain a return of his security deposit pursuant to section 38; an order requiring the landlord to comply with the *Act* pursuant to section 62; an order to the landlord to provide services or facilities required by law pursuant to section 65; an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; authorization to change the locks and an order to suspend or set conditions on the landlord's right to enter pursuant to section 70; and authorization to recover the filing fee for this application from the landlord pursuant to section 72 as well as an Order of Possession to the tenant for the rental unit.

Preliminary Issue: Service of Documents (Evidence)

Both parties attended and the landlords confirmed receipt of the tenant's materials I support of his application. However, the landlords claimed that they also submitted materials for this hearing. Landlord S testified that materials were provided to the tenant by taping the evidentiary materials on his door on August 15, 2016. She called a witness (Witness N) to testify regarding service of these materials. Landlord A testified that Witness N was the person who actually posted the materials on the tenant's door. When Witness N was asked how he came to witness the service of the documents, he stated, "I have eyes". In response to other questions, the witness declined to answer. At one point in his testimony, the witness stated that Landlord S posted the materials on the tenant's door but refused to provide any date or details.

Proper service of documents is essential to the Residential Tenancy Dispute Resolution process. Service of documents is restricted by timelines and methods of service to underscore its importance. It is essential that a party be able to prove that they have sufficiently served the documents to the other party for a Residential Tenancy Dispute Resolution hearing.

Residential Tenancy Policy Guideline No. 12 and the Dispute Resolution Rules of Procedure state that a person serving (and relying on) materials must be prepared to prove service under

oath. The landlord testified that her witness served the materials to the tenant. The witness did not confirm this testimony. The tenant denied receipt of the materials.

An arbitrator must be satisfied that the serving party sufficiently served the other party, allowing that party an opportunity to know and respond to any materials relied on in the dispute resolution hearing. Given the lack of detail with respect to service of the respondent/landlord's evidence, I find that the landlord was unable to prove that the tenant was sufficiently served with the landlord's evidentiary materials. Therefore, I exclude those materials from being considered in this matter.

At the outset of the hearing, the tenant withdrew his application to cancel the 1 Month Notice to End Tenancy, his application for repairs and provide services/facilities, his application for an order regarding the landlord's access to the rental unit, his application for authorization to assign or sublet as well as his request for the return of his security deposit.

Issue(s) to be Decided

Is the tenant entitled to a monetary award to reflect the lack of services, repairs and losses including the loss of quiet enjoyment as a result of this tenancy?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began on May 1, 2016 with a monthly rental amount of \$1500.00 payable on the first of the month. The landlord continues to hold the tenant's \$750.00 security deposit and \$750.00 pet damage deposit paid by the tenant at the outset of the tenancy. The landlords testified that they did not submit any application in response to the tenant's claim for \$7800.00.

The tenant testified that the landlords did not repair the oven portion of his stove for approximately 3 months. He moved in May 1, 2016 and was told that the oven would be repaired "any day". Landlord A confirmed that the oven was ordered for replacement in April 2016 however it did not arrive until the end of July 2016. Landlord A confirmed that the tenant was not offered any substitution or compensation for the lack of oven for approximately 3 months. The tenant testified that he requested the landlord provide him another means of cooking but the landlord did not. He testified that the heat was also affected by the repair problems in the rental unit for periods of time. Landlord A testified that she acknowledged these issues, explained a delay in the delivery of the oven and offered a monthly rent reduction for the time the tenant was without a stove and without heat however she never followed up by providing a rent reduction to the tenant.

The tenant testified that there were outbuildings he was entitled to access as part of his tenancy but he was restricted from doing so. While the tenant claimed that he was to have unrestricted access to at least two outbuildings, the landlord testified that the tenant was allowed use of one

outbuilding and never granted access to a second. Both parties agreed that the use of any outbuilding did not make up a part of the residential tenancy agreement.

The tenant testified that he was not allowed access to a patio off his previous suite within the residence. The landlord pointed out that this patio was accessed through a suite/unit that the tenant no longer resided in and held no claim to.

The tenant testified that Landlord A entered his suite on numerous occasions without his consent. The landlord testified that the tenant had sublet one of his rooms and the sublet tenant permitted the landlord access to the unit on several occasions. The landlord testified that she did not provide advance notice or notice in writing. She testified that she and her co-landlord would enter the unit to take photographs of the state of the unit; to install items at the tenant's request or to inspect the unit.

The tenant testified that the overall dealings with the landlord were frustrating and difficult often without full response or follow through. The tenant testified that the landlords were so vexatious that he was caused a loss of quiet enjoyment of his residence as well as to lose a sublet prospect and the additional income that sublet would have provided. He testified that the landlords "scared away" prospective subletters with unreasonable demands and inappropriate behaviour which he described in undisputed testimony.

The tenant described the invasion of his home without notice, the loss of enjoyment of his rental unit and the decrease in the availability of services as the equivalent of rent increases to the tenant as the quality of his accommodations decreased without any equivalent reduction in his rent.

Analysis

Section 27 of the *Residential Tenancy Act* addresses terminating or restricting services or facilities within a rental unit.

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 32 of the Act describes a landlord's obligation to repair and maintain the residential premises. I accept the testimony of the tenant that the landlords did not repair or replace his oven for 3 months. I accept the testimony of the landlords that they offered a monthly reduction to the tenant's rent and I find that is appropriate in the circumstances. The tenant was without an essential facility for a significant period of time and therefore is entitled to compensation in the amount of \$150.00 per month affected (3 months) totalling \$450.00.

I find that the tenant has not provided sufficient evidence that there was an agreement to allow him access to any outbuildings. If any agreement existed, it was outside of the residential tenancy agreement and therefore not appropriately addressed by this decision. I dismiss this portion of the tenant's claim.

I accept the tenant's testimony that he was not allowed access to a patio off his previous suite within the residence. However, I also accept the testimony of the landlord that, while the tenant might have been permitted at times to use the space, the tenant held no claim to this patio access as a result of his current tenancy agreement. I dismiss this portion of the tenant's claim.

The tenant provided undisputed testimony that the landlord entered his suite on numerous occasions without his consent. The landlord relied on the assertion that another person within the residence permitted the landlord access to the unit. I find that the variety of occasions described and the reasons for the landlord entering the unit should have required the tenant to seek the tenant's permission or at minimum provide notice. I refer to (and reproduce for the benefit of the parties) section 29 of the Act regarding a landlord's access to a rental unit,

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;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

- (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).

[emphasis added]

The landlord testified that he did not provide written notice or seek the tenant's permission to enter the suite. Therefore, I find that the tenant is entitled to an amount of compensation that reflects the landlord's lack of compliance with the Act and the violation of his privacy. I find that, overall, the tenant has described a tenancy where he was not provided all facilities or services that he was entitled to, that he suffered invasion of his home and his privacy and that the landlords affected other aspects of the enjoyment of his home including but not limited to his ability to rent or sublet within his unit.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

In this case, the tenant has proven that the landlords failed to honour the residential tenancy agreement and their obligations under the Act. I accept the testimony of the tenant that the residential premises that facilities were not provided and requests not met in a timely manner. I accept the testimony of the tenant that he lost quiet enjoyment, privacy and security as a result of the behavior of the landlords. Given all of the evidence provided by both parties, I find that the tenant is entitled to nominal damages of \$2000.00 to reflect the significant disturbance and disruption he suffered during this tenancy.

In all of the circumstances described, I find that the tenant is entitled to a monetary award in the amount of \$2450.00 as well as the cost of the filing fee for this application (\$100.00).

Conclusion

I issue a monetary order to the tenant in the amount of \$2550.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, this 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: September 12, 2016

Residential Tenancy Branch