



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, FF

Introduction

This hearing convened as a result of cross applications.

In the Landlord's Application for Dispute Resolution the Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent, a Monetary Order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

In the Tenant's Application filed August 29, 2016 the Tenant sought to cancel the Notice as well as monetary compensation in the amount of \$500.00.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Notice be cancelled?

3. What should happen with the Tenant's security deposit?
4. Should either party recover the filing fee?

Background and Evidence

The Landlord testified as to the terms of the tenancy as follows.

The tenancy began July 1, 2015. Monthly rent was payable in the amount of \$650.00 payable on the 1st of the month. A security deposit in the amount of \$325.00 was paid at the start of the tenancy.

A copy of the residential tenancy agreement was provided in evidence. This document reads as follows:

Rental Agreement

Lessor: [Landlord's name]

Lessee: [Tenant's name]

The rental address is: Baesment-[rental address].

The rental will start from July 01, 2015 to June 30, 2016. The rental fee is \$650 per month, which is including water, electricity, heater, internet, furniture, and laundry. The security deposit is \$325. The rental fee must be paid before the first day of month.

[Landlord's signature]

[Tenant's signature]"

The Landlord testified that the Tenant failed to pay the full amount of rent for April 2016 and began paying \$550.00 instead of \$650.00 per month such that by the month of August 2016 he was in arrears in the amount of \$500.00. The Landlord issued a 10 day Notice to End Tenancy for non-payment of rent on August 28, 2016 indicating the amount of \$500.00 was due as of August 1, 2016 (the "Notice").

Based on the testimony of Y.Y, I find that the Tenant was personally served with the Notice on August 28, 2016.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, September 2, 2016. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenant made an application to dispute the Notice on August 29, 2016.

Y.Y. testified that the Tenant paid rent for September 2016 and October 2016 and the Landlord provided the Tenant with a receipt for "use and occupancy only".

Y.Y. confirmed that the Tenant failed to pay the \$500.00 outstanding, although he did pay the correct amount of rent in the amount of \$650.00 for September and October 2016.

The Tenant also testified that he moved into the rental unit July 4, 2015. He confirmed that his monthly rent was \$650.00.

The Tenant also confirmed that he only paid \$550.00 in rent for April, May, June, July and August 2016. He stated that he could not use the laundry machine because it was in the Landlord's area and they were away for five months and as a result the Landlord told him to reduce the rent to \$550.00.

The Tenant stated that the Landlord went to China on April 7, 2016. He said that he provided the Landlord post-dated cheques for \$550.00 for the five months they would be away and that at no time did the Landlord communicate these payments were unacceptable. Introduced in evidence were copies of three post dated cheques for \$550.00.

The Tenant also stated that the Landlord sent a text message to the Tenant in August of 2016 asking the Tenant to move out on September 1, 2016. Those text messages were provided in evidence by the Tenant. In those text messages, the Landlord writes as follows:

[Sent August 8, 2016 at 11:48]

"hi, Laurence we decide to sell the house and our contract has already finished. We will renovate our house so we can not rent you the room. You have one onth to move and we will stop renting at September 1st."

[Sent August 16, 2016 at 8:11]

"Hi Laurence, did you find your new place? If you won't move out, our new prices is \$1300 per month. I have asked my lawyer, since our contract is closed we have the right to give a new price. We are legally rent the place and we keep the right to sue you."

The Tenant also submitted in evidence the following email:

*"Hello,
I'm afraid to say that I can not meet your request that asked me to move out in 10 days.
You're saying that I've been paid \$100 short for 5 months, that was your reason to support early move out request.*

Let me remind you why we agreed to pay \$100 less for 5 months what I've been paid.

The reason was when your family went to China for vacation you were the one who suggested to pay \$100 less because I will not be able to laundry room which located on your floor, you wanted totally sealed your floor while you're away.

*Of course you provided the mini size machine for my underwares.
Anyway I had to use dry cleaners for my regular cloths and those big sheets and blankets.*

*And today I also have request to you,
As long as I paid rentals, the area supposed to be my space
Although you're landlord your suppose to not come in and out without my permissions.
Moreover you entered several times into my place when even I was not there, and took pictures of my space.
Like I told you, that space should be secured and you have to respect my Privacy.*

*And you also told me that I suppose to not smoke inside the building
Of course I never smoke inside of my place, not because there was such kind of agreement on the contract, but because I tried to give you and your family including your little girl a favor.*

And also you bang my door even at night screaming that give money, pay Money??

Even thou I told you that I already mailed the check out thru the registered Mail.

On that night I showed the receipt of the registered mail but you still kept

Banging my door till police came.

And also you suddenly looked inside of my place and took pictures.

I never think those acts were right things to do.

*I respect the fact that you are the owner of the building,
in the same ways I should be respected my privacy and space as a tenant who
pays monthly rentals always on time.*

*I have already have 2 different reference numbers from police officers about your
Unmannerly behaviors.*

*I hope I'll not make anymore 911 phone calls due to your violation of tenant
Landlord agreement.*

Thank you"

[Reproduced as Written]

In response to the Tenant's submissions the Landlord stated that before they went back to China they bought the Tenant a brand new laundry machine on March 24, 2016. In support they provided photos of the laundry machine. The Landlord further stated that the Tenant claimed he couldn't use the laundry machine, yet he did use it.

The Landlord further confirmed that the Landlord did not tell the Tenant to pay only \$550.00. When I asked why she did not issue a 10 Day Notice when the Tenant failed to pay the proper rent in April, she stated they did not do so as they were in China.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Although the rental agreement indicated the tenancy was for a one year fixed term, it continued after June 30, 2016. Accordingly, I find that the tenancy continued on a month to month basis as of July 1, 2016.

In support, I rely on the definition of periodic tenancy contained in the *Residential Tenancy Act* which reads as follows:

"periodic tenancy" means

- (a) a tenancy on a weekly, monthly or other periodic basis under a tenancy agreement that continues until it is ended in accordance with this Act, and
- (b) in relation to a fixed term tenancy agreement that does not provide that the tenant will vacate the rental unit at the end of the fixed term, a tenancy that arises under section 44 (3) *[how a tenancy ends]*;

In addition I am guided by section 44(3) which reads as follows:

- 44** (3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

The tenancy agreement was reproduced in its entirety in this my Decision and clearly shows that the agreement did not provide that the Tenant was to vacate the rental unit as of June 30, 2016. Accordingly, the tenancy is to continue on a month to month basis with the Tenant paying \$650.00 in rent.

I further find that the Landlord agreed the Tenant's rent would be reduced from April 2016 to August 2016. In this regard I prefer the evidence of the Tenant over that of the Landlord for the following reasons.

- There was no evidence that the Landlord brought the alleged \$100.00 rent payment deficit to the Tenant's attention at any time before August 2016.
- In the text communication between the parties, and in particular, the August 2, 2016 text from the Landlord to the Tenant, the Landlord informed the Tenant they intended to sell the property after renovating it. The Landlord further informed the Tenant that he was to move out by September 1, 2016. Had the Tenant failed to pay the appropriate amount of rent, it would seem timely for the Landlord to raise this with the Tenant.
- Additionally, in the text sent to the Tenant on August 16, 2016 the Landlord informs the Tenant the rent will be raised to \$1300 per month if he remains. Again, the Landlord failed to raise the \$500.00 alleged deficit with the Tenant.
- The Landlord issued the Notice on August 28, 2016.

In all the circumstances I find that the Landlord was attempting to end the tenancy for reasons other than unpaid rent, such as their intention to renovate and sell the rental

unit. Further, it is clear the Landlord wished to double the rent paid. It was only when the Tenant refused to accede to the Landlord's demands and move out by September 1, 2016 that the Landlord issued the Notice.

Accordingly I find the Landlord has failed to prove rent was outstanding at the time the Notice was issued and as such I cancel the Notice. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

The Tenant failed to provide any submissions in support of his monetary claim for \$500.00. Should this amount relate to the rent reduction I have found was agreed upon by the parties, that amount has already been accounted for. Should that amount relate to other monetary claims the Tenant may have, they are dismissed with leave to reapply.

The Landlord's claim for an Order of Possession and monetary relief is dismissed. The security deposit shall remain in trust until dealt with in accordance with the *Act*.

The Tenant, having been successful is entitled to recover the \$100.00 filing fee from his next month's rent.

Based on the evidence before me I also caution the Landlord as follows.

As the tenancy continues on a month to month basis, the Landlord may not raise the rent unless such a rental increase is done in accordance with the *Residential Tenancy Act* and the *Residential Tenancy Regulation*. The Landlord's attempt to double the rent is an illegal increase.

Should the Landlord wish to end the tenancy for their own use, for sale of the property, or to conduct renovations, the Landlord must issue a 2 Month Notice to End Tenancy for Landlord's Use in accordance with section 49 of the *Residential Tenancy Act*, and must provide the Tenant with a free month's rent in accordance with section 51.

The Landlord must not enter the rental unit except as specifically provided for in the *Act*. The Landlord is cautioned to consider sections 28(c), 29, 44(3) and 70. Should the Landlord enter the rental unit in violation of the *Act*, the Tenant may be entitled to a rent reduction for breach of his right to quiet enjoyment.

Conclusion

The Landlord failed to prove rent was outstanding as alleged on the Notice. The Notice is cancelled and the tenancy shall continue in accordance with the *Act*. The Landlord's claim is dismissed.

The Tenant is entitled to reduce his next month's rent by \$100.00 as compensation for the \$100.00 filing fee.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 19, 2016

Residential Tenancy Branch