



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, CNL, MNDC, FF, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property and Because the Tenant Does Not Qualify for Subsidised Rental Unit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties each called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

During the course of the hearing, the parties agreed that the tenant has vacated the rental unit, and the tenant withdraws the applications to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property and Because the Tenant Does Not Qualify for Subsidized Rental Unit.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation for issuance of the 2 Month Notice to End Tenancy for Landlord's Use of Property, and for additional rent paid?

Background and Evidence

The tenant testified that during the tenancy, the landlord had requested extra money for when the tenant's girlfriend stayed at the rental unit. On the first occasion the tenant

paid an additional \$100.00 in October, 2016 and in November an additional \$60.00. The tenant didn't think it was fair but due to the low vacancy rate for rentals in the community, the landlord said \$15.00 per night was required. Then the tenant found out that wasn't legal and refused to pay it anymore. All was fine until the tenant refused to pay additional money, and then the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The tenant also testified that the landlord was served with 10 days written notice that the tenant would be vacating the rental unit effective February 27, 2017, and rent was paid in full for February. The notice was sent to the landlord by registered mail on February 17, 2017. The tenant also provided the landlord with a forwarding address by text message but does not recall when.

The landlord testified that this tenancy began on September 1, 2016 and the tenant vacated the rental unit on February 26, 2017. Rent in the amount of \$900.00 per month was payable on the 1st day of each month. Prior to the beginning of the tenancy the landlord collected a security deposit from the tenant in the amount of \$450.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite, and the landlord resides in the upper level of the home.

The tenant's girlfriend stayed at the rental unit and used up a lot of hot water, draining the large hot water tank, and the rental unit is meant for 1 person, not 2 people. Having the extra person there cost the landlord extra money for utilities, and the breaker was popping. The parties agreed that the tenant would pay an extra \$15.00 per day to offset the utility costs, but not in writing. The parties exchanged text messages, and copies have been provided.

The landlord's son is going to school and will be graduating in April, and the landlord wants the rental unit for her son to move into. The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing. It is dated February 3, 2017 and contains an effective date of vacancy of April 3, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)."

The tenant disputed the notice, and the landlord feels this is a set-up and unjust. The parties had a lengthy discussion about it and the tenant agreed to pay the \$160.00. The landlord's partner was present when the tenant paid the additional \$100.00, however the landlord acknowledges it was received, as well as another \$60.00.

The landlord testified that she received the tenant's forwarding address in writing on March 1, 2017.

The landlord's witness is the spouse of the landlord, and testified that the tenant's girlfriend ran water for 35 minutes. Later, the tenant asked how much money the landlord wanted and the witness didn't say anything. The tenant came up with \$100.00 and put it in the witness' hand.

Analysis

Where a party makes a monetary claim as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the loss exists;
2. That the loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such loss;
4. What efforts the claiming party made to mitigate any loss suffered.

The parties agree that the tenant paid an additional \$160.00 to the landlord when the tenant's girlfriend stayed at the rental unit during the tenancy. The landlord testified that it was an agreement by the parties to off-set utility costs, although not in writing, and the tenant testified that he thought the landlord was entitled to it and paid it until he learned otherwise. I also note that the tenancy agreement specifies: "3. Not sublet or allow any person(s) or pet(s) to live at the premises without first obtaining permission from the Owner, or Agent for the Owner. The Owner reserves the right to increase the rent if additional person(s) or Pet(s) are approved." However, the *Residential Tenancy Act* states that a tenancy agreement "...must set out the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies." The regulations specify: "A landlord must not charge a guest fee, whether or not the guest stays overnight." In this case, the parties do not dispute that the tenant's girlfriend is a guest, not an occupant, and therefore, the landlord may not increase rent for the guest unless agreed to in writing by the tenant.

I find that the tenant is entitled to monetary compensation in the amount of \$160.00.

The *Residential Tenancy Act* requires a landlord to provide compensation to a tenant equivalent to 1 month's rent if the landlord ends the tenancy by serving a 2 Month Notice to End Tenancy for Landlord's Use of Property. That is often accomplished by not collecting rent for the last month of the tenancy. However, the *Act* also provides that a tenant may give the landlord 10 days written notice to end the tenancy earlier and

must pay the landlord rent to the effective date of the tenant's notice, and the landlord is still required to compensate the tenant the equivalent of 1 month's rent. In this case, the parties do not dispute that the tenant has paid rent to the end of February, 2017. The effective date of vacancy contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property is April 3, 2017. The tenant sent the landlord notice to end the tenancy earlier effective February 27, 2017, but I find that it was not deemed served until 5 days after mailing it, being February 22, 2017. Incorrect effective dates contained in a notice to end a tenancy are changed to the nearest date that complies with the *Act*. Therefore, I find that the tenant was obligated to pay rent to March 4, 2017 amounting to \$120.00, and the tenant is entitled to the difference between that amount and the \$900.00 rent, or \$780.00. The relevant sections of the *Act* are:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [*landlord's use of property*] or 49.1 [*landlord's notice: tenant ceases to qualify*], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [*tenant's compensation: section 49 notice*].

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

The landlord testified that she received the tenant's forwarding address in writing on March 1, 2017, and I order the landlord to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

In summary, I find that the tenant is entitled to monetary compensation of \$160.00 for overpayment of rent for a guest; \$780.00 for compensation required under Section 51 of the *Residential Tenancy Act*, and recovery of the \$100.00 filing fee, for a total of \$1,040.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,040.00.

I order the landlord to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

This order is final and binding and may be enforced.

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: March 13, 2017

Residential Tenancy Branch