Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC CNL OPC OPL DRI ERP AAT MNDC MNSD OLC FF

Introduction

Both parties attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated February 27, 2017 to be effective March 31, 2017. The effective date on the Notice is automatically corrected to April 30, 2017 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To cancel a notice to end tenancy for cause pursuant to section 47;
b) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
c) To dispute a rent increase pursuant to section 43;
d) To order the landlord to make emergency repairs for health and safety reasons;
e) To compensate the tenant for withdrawal of necessary facilities contrary to section 27 of the Act;
f) To obtain a refund of the security deposit;
g) To order the landlord to allow access to the unit;
h) To order the landlord to comply with the Act; and
i) To recover the filing fee for this Application.

Preliminary Issue:

Both parties filed all of their evidence late. The Residential Tenancy Branch Rules of Procedure 3.4 and 3.5 provide that to the extent possible, the applicant must file copies of all available documents at the time the application is filed. If not available, they must be received by the Residential Tenancy Branch as soon as possible and at least 5 days before the dispute resolution proceeding. In the exercise of my discretion under Rule 11.4, I informed the parties that I would consider their submissions and documentary evidence that was relevant to the claim. Neither party requested an adjournment and both were well informed of the issues.

Issue(s) to be Decided:

The tenant has vacated so the application to cancel the Notices to End Tenancy is no longer relevant. The remaining issue is whether the tenant has proved on a balance of probabilities that he is entitled to compensation and if so, in what amount?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 15, 2011, rent was $900 a month plus $25 for internet and a security deposit of $900 was paid July 27, 2011. A tenancy agreement made in July 27, 2011 names the landlord and her daughter as landlords and the tenant/applicant and a female who no longer lives with the tenant. The tenant claims as follows:

1. $436.80 refund for an illegal rent increase. In January 2016, his rent was increased with no notice to $950 a month and he paid that amount from January 1, 2016 to March 1, 2017. In the hearing, he asked to increase the claim to 18 months times $50 a month, or $900.
2. $137.50 for internet restriction. He said it was a fast service of a major provider with more allowed downloads. It was changed to another major service with less allowed downloads. He was very restricted, he said, as there were more people living upstairs at that time who were using the allowable service. He was also doing an exam when it was cut without notice. The landlord said the tenant's lease only provided for internet service for $25 a month and he was provided with that. She said the mother doesn't use internet and was subsidizing the tenant's use, the first provider charging $61 a month, and the second $35 a month.
3. $975 refund of rent pursuant to a section 49 Notice to End Tenancy. He said there was no section 49 Notice served. There was a text agreement after a discussion with the landlord and agent about possible compensation.
4. $282.50 partial refund of March rent. He paid $975 for March and said he had an agreement with the landlord and agent that he would pay only three quarters of the rent for March if he moved out on March 31, 2017. The mother wanted the use of the lower unit because of medical issues. The landlord said that was agreed if he moved without fuss and problems but instead he filed an Application for Dispute and said he was contacting his lawyer.
5. $325: for access restriction to the bathroom, shower and water. He said this was based on 8 days rent refund at $31.67 a day. It took 2 days to fix the hot water tank and 6 days to cope with a leak in the wall. He said there was a hole between the bathroom and bedroom so no privacy and the carpets smelled. The landlord said there was only a small portion of the room unusable due to the leak, water was always available and the hot water tank was fixed within a day. The

bathroom was always usable and the hole from the leak did not go right through the wall so there was still privacy. They were informed of the leak January 8, 2017, it was fixed January 9, 2017 but the hole was left open to let it dry. It was fixed January 11, 2017 and they had the carpets all cleaned.

6. $900: refund of illegal security deposit collection. The landlord said they are not withholding the security deposit. The parties agreed the tenant has not provided a forwarding address in writing yet and the landlord said they are concerned because half of the deposit was paid by the former female partner of the tenant.
7. $67.19: cost of heat dish for temperatures were significantly below the required 22 degrees in the municipal bylaw. The landlord said they replaced the furnace in 2014, the tenant was not authorized to buy the heat dish and he has taken it with him as it is his. The tenant said the heat was not working for 5 days and they had to use the oven.
8. $77.50: for restriction in laundry access. It was a shared laundry accessed from the front hall and the landlord had to open it when requested. The witness said her mother is home 90% of the time, the access was not restricted and the laundry receipts were in the tenant's fiancée's name and she lives in a building with no laundry. The tenant said he was living the last month with his fiancée because the landlord had indicated they felt unsafe when he was there.

In total, the tenant requests compensation of $3280.50 including recovery of the filing fee. In closing submissions, the tenant invited me to read the evidence of the text agreement regarding compensation, the fact that the landlords did not do a move-out report and the legitimacy of his monetary claim. The landlord pointed to the original tenancy agreement which is the only signed agreement. She said the security deposit is owed to both parties who were tenants at the time. She emphasized there was no two month Notice to End Tenancy, only a one month Notice and the tenant did not live in the suite in March but elsewhere with his fiancée. She noted repairs were done speedily as required.

As discussed with the parties, all the documentary evidence (approximately 48 pages) was late but at my discretion, is considered as it relates to the claim. Many texts and emails are included. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As the tenant has vacated the premises, I find it is moot to consider cancelling the Notice to End Tenancy, to order repairs or access. The tenant's claim for compensation and supporting evidence of both parties will be considered.

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.

I find the evidence of the tenant credible in respect to the claim for refund of an illegal rent increase. His credibility is supported by the landlord agreeing to the facts but contending he had not had an increase before. Section 43 of the Act provides for allowable rent increases which are calculated each year. They are not cumulative so I find the landlord in violation of the Act. If the landlord seeks to raise the rent above the allotted limit for the year, the landlord may make an Application according to section 43(3). I find 2016 had an allowable rent increase of 2.9% which, in the tenant's case, would have been $22.50. Furthermore, he was given no Notice of Rent Increase as required by section 43 of the Act. I find the tenant entitled to the **$436.80** refund claimed in his Application. Although he tried to increase his claim in the hearing, I find he filed no amendment or served the landlord with an increased claim. According to the Principles of Natural Justice, a party must be informed of the case against them and given opportunity to reply. I find the landlord had no notice of this increased claim so I dismiss his increased claim for compensation for an illegal rent increase.

In respect to the tenant's claim for internet restriction, I find no reference to the provision of internet in his tenancy agreement and no other agreement in evidence as to the provision of high download speed. I find the weight of the evidence is that he paid $25 for the provision of internet and the landlord changed providers. I find insufficient evidence of an interruption in his service as landlord's billing statements show the second provider connected July 29, 2016 and the first disconnected on August 1, 2016. I find the landlord continued to pay charges for internet in excess of $25. I dismiss this portion of his claim as I find insufficient evidence to support service was restricted.

Regarding the tenant's claim for $975 pursuant to a section 49 Notice, I find the weight of the evidence is that there was no section 49 Notice served to him. The tenant relies on a text agreement made with an agent. I find section 52 of the Act states that a Notice given to the tenant by the landlord must be in the approved form in writing and contain the details set out in that section. Section 51 only entitles a tenant to the one month compensation when they are served with the approved form of section 49 Notice. I dismiss this portion of his claim.

In respect to his claim for $262.50 refund of March rent based on an agreement that he pay only three quarters of the rent for March, the landlord agreed this was promised but on the basis there would be no dispute. I find the text referenced by the tenant promises three quarter rent for March if he vacates by March 31, 2017. It has no conditions in the text. I find he vacated on March 31, 2017 so is entitled to pay only three quarters of March rent as promised. I find he paid $950 for March and three quarters of this is $712.50. I find him entitled to **$237.50** refund for March. I find the tenant's claim is calculated based on a refund of some internet costs (total $975) but I find the rent did not include internet costs.

In respect to the tenant's claim for access restriction to bathroom, shower and water, I find the landlord has a responsibility to maintain the premises pursuant to sections 32 and 33 of the Act. I find the weight of the evidence is that the hot water tank did break down but was repaired within a day. I find the leak in the wall was addressed immediately and repaired the next day. I find the carpets were also cleaned within a reasonable time. Although the tenant maintained they lost privacy in the bathroom, I find the landlord's evidence more credible that the hole did not go through the wall, it had to be left open briefly to dry but it was fixed within 3 days. I find the landlord's evidence more credible as they provided professional invoices to support their statements. I find any restriction or discomfort suffered by the tenant was not due to any act or neglect of the landlord so I find them not entitled to compensation for this part of the claim.
In regard to the illegal collection of a security deposit, I advised the parties to consult section 38 of the Act regarding refunds of security deposits to the tenant. I find the evidence of the tenant is that he has not yet provided his forwarding address in writing to the landlord so I find his application for a return of the deposit premature. I dismiss this portion of his claim with leave to reapply if necessary.

Respecting the tenant's claim for the cost of a heat dish, I find he bought it and has kept it when he moved so he is not entitled to compensation for the heat dish. He attempted to amend his claim in the hearing to claim for lack of heat for periods of time. As

explained earlier, he filed no amendment to his Application and the landlord had no notice of this increase in claim. I dismiss this portion of his claim.

Regarding his claim for restricted laundry access, I find insufficient evidence to support his claim. He has not satisfied the onus of proving this on a balance of probabilities. The text messages indicate the landlord was prepared to give access when requested and it appears she was home most of the time and did this. The laundromat receipts are in his fiancée's name and may equally be for her laundry as she did not have laundry access in her suite. I dismiss this portion of his claim.

In respect to the BCSC case referred to me by the tenant, I applied the basic principles. Here there was a written tenancy agreement, there was consensus by text on the March rent. However, texts and consensus do not override the provisions of the Act regarding the form required for a section 49 Notice or for a legal increase of rent.

Conclusion:

The Application of the Tenant for compensation is partially successful and I find he is entitled to a monetary order as calculated below including recovery of his filing fee. I give him leave to reapply for a refund of security deposit if the landlord does not comply with section 38 of the Act after he serves her in writing with his forwarding address.

Calculation of Monetary Order:

Refund of rent increase as claimed	**436.80**
Refund of ¼ of March 2017 rent	**237.50**
Filing fee	**100.00**
Total Monetary Order to Tenant	**774.30**

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: April 12, 2017

Residential Tenancy Branch