



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RM Hotel Ventures Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNR, AAT, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking more time than prescribed to dispute a notice to end the tenancy; for an order cancelling a notice to end the tenancy for unpaid rent or utilities; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The tenant and an agent for the landlord company attended the hearing, and the landlord's agent was accompanied by legal counsel.

The tenant and the landlord's agent each gave affirmed testimony, and the parties, or counsel were given the opportunity to question each other. All testimony and the evidence provided has been reviewed and is considered in this Decision. No issues with respect to service or delivery of evidence were raised.

Issue(s) to be Decided

- Should the tenant be granted more time than prescribed to dispute a notice to end the tenancy?
- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Should the landlord be ordered to provide access to and from the rental unit for the tenant or the tenant's guests?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began in June or July, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 4th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$200.00 which is still held in trust by the

landlord, and no pet damage deposit was collected. The rental unit is a room in a hotel, and there is no written tenancy agreement.

The landlord's agent further testified that the tenant is in arrears of rent currently the sum of \$2,665.00, being rent for the last 3 months as well as something from the last 6 months. On April 8, 2017 the tenant paid \$100.00, and in March he paid \$700.00. The landlord's agent has no way of accessing the computer for the specifics of the arrears.

On April 28, 2017 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was posted to the door of the rental unit, and a copy has been provided for this hearing. It is dated April 28, 2017 and contains an effective date of vacancy of May 8, 2017 for unpaid rent in the amount of \$1,065.00 that was due on April 9, 2017. The landlord's agent testified that the computer doesn't contain the 31st of any month – it only goes to the 30th and therefore dates are off occasionally. However, the tenant owed \$550.00 for January. He also testified that rent was not paid in advance; the landlord allowed the tenant to pay on flexible dates.

The landlord has provided a copy of an account for the tenant showing rental charges of \$6,260.85 and an Occupancy Tax of \$939.15, for a total of \$7,200.00. It adds another \$15.00 which the landlord's agent testified was for a loan the tenant made from the landlord's front desk. It also shows a payment from the tenant in the amount of \$5,350.00, and a total owing of \$1,865.00. The only dates that appear on the document are the "Date In" of April 9, 2016 and "Date Out" of April 6, 2017.

The tenant has not paid any rent since the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served.

The landlord's agent also testified that the lock was placed on the laundry room door because someone tried to steal the coins. The tenant was permitted to do laundry, and the landlord's employees call tenants when the room is available. If the tenant doesn't answer the call, the landlord's employees call the next person on the list. The tenant asked 2 or 3 times for access.

The key card for the rental unit has to be re-programmed each month or it expires. The tenant was not allowed to have his re-carded because rent had not been paid, and the landlord's agent received a call from the Residential Tenancy Branch about it.

The landlord's agent also testified that he offered the tenant a cheaper room, but the tenant had to clear his room out. The tenant didn't pay any rent, and the owner said he would clear the debts owed by the tenant, but the tenant didn't give any answer to the owner.

The tenant testified that he didn't receive the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities until May 1, 2017 when he noticed it posted on the door covering the peephole. The tenant didn't understand how or what time limits applied to disputing it and filed the Tenant's Application for Dispute Resolution on May 5, 2017.

The parties had an agreement that the tenant could make partial payments during each month, and he always caught up by the end of each month. Rent is not paid in advance; rent for April is due by the end of April, and the tenant has been doing so since October, 2016. The tenant only owed \$200.00, not \$1,065.00 as stated in the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

Rent was reduced in December, 2016 to \$750.00 and the landlord offered another room, but then it wasn't available. In January, 2017 the same thing happened. The offer for another room was a reduction to \$700.00 per month, and to \$750.00 per month in this rental unit because that's what others were paying.

The landlord cut off the power to the rental unit, refused to re-program the key card to the rental unit, and denied laundry facilities, which is included in the rent. The tenant had no power for 10 or 14 days. The landlords only wanted the tenant to move out so they could raise the rent to \$200.00 per day for the season.

The tenant also testified that the landlord's written material is not true, and the tenant actually called the front desk a dozen times about a chance to do laundry. The tenant also had to have a guest stay in his rental unit if the tenant went out so that he could re-gain entry.

The tenant also submits that rent should be reduced to \$750.00 as another agent of the landlord stated in December, 2016, but he refused to put it in writing. Also, the toilet in the rental unit plugged numerous times and the landlord gave the tenant a plunger.

After the tenant filed the application for dispute resolution the owner said that he would take care of all charges and move the tenant to another room, but instead of talking, the landlord cut the power off.

Analysis

Firstly, with respect to the tenant's application for more time than prescribed to dispute the notice to end the tenancy, the parties disagree on when it was posted to the door of the rental unit, however service by posting to a conspicuous place is deemed to be service 3 days after posting it. If the landlord is correct that it was posted on April 28, 2017 it is deemed to have been served on May 1, 2017. A tenant has 5 days to dispute such a notice, and, having filed the Tenant's Application for Dispute Resolution on May 5, 2017, I find that the tenant has disputed it within the time prescribed, and no additional time is necessary.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*.

The *Act* also requires that the landlord establish that the tenant failed to pay rent when it was due. The tenant testified that when he moved in he paid the rent at the beginning of the month,

and that the parties agreed that the tenant could pay by installments to the end of each month. The landlord's agent testified that rent was not payable in advance, the computer doesn't contain an ability to recognize the 31st day of any month, and that rent was payable on the 4th day of each month. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities states that the tenant failed to pay rent that was due on the 9th day of the month. The written submission of the landlord's legal counsel states that the landlord's Invoice shows that the tenancy began on September 4, 2016 and as of June 1, 2017 the sum of \$1,865.00 remains outstanding, and that as of June 4, 2017 another \$800.00 will be owed. There is no tenancy agreement to establish when rent is payable. The issue is whether or not the landlord has established that at the time the notice was issued, the landlord had cause to issue it. It is dated April 28, 2017 and states that the tenant failed to pay rent in the amount of \$1,065.00 that was due on April 9, 2017.

I find that the Invoice is consistent with the notice to end the tenancy, given that \$1,065.00 to April, plus May's rent of \$800.00 equals \$1,865.00, but I do not find that a landlord may include a loan given to the tenant at the front desk. That has nothing to do with a tenancy agreement between a landlord and a tenant. That reduces the amount owed for rent on the notice to \$1,050.00. It is also contrary to the *Act* for a landlord to charge an Occupancy Tax.

The landlord's agent testified that the tenant is in arrears of rent currently \$2,665.00, and that the tenant paid \$700.00 in March and \$100.00 in April. That would, if rent is \$800.00 per month, amount to \$800.00 owed to the landlord for March and April. The landlord also testified that the tenant owes something from the last 6 months, but did not specify, but seemed to guess that the tenant owed \$550.00 for January. That would amount to \$1,350.00. May's rent would add another \$800.00 however that still doesn't add up to \$2,665.00, even if the \$15.00 loan is included.

In the circumstances, I find that the landlord has failed to establish that at the time the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued the tenant failed to pay rent when it was due. I am not satisfied that the landlord has any idea when the tenancy began, when rent is payable or how much is owed. Therefore, I cancel the notice and the tenancy continues.

I am also satisfied in the evidence that the landlord has denied entry to the rental unit for the tenant and the tenant's guests, and I order the landlord to re-program the key card immediately and keep it programed for the tenant until the tenancy ends in accordance with the *Act*.

I also find that laundry is included in the rent, given that the landlord did not dispute the tenant's testimony that the facility has been provided to the tenant since the beginning of the tenancy. The landlord's agent testified that it was locked due to vandalism, and I accept that, however I do not accept the testimony that the tenant has to ask and wait for a call from the front desk when a time becomes available, or that the tenant was ever called. I find that testimony to be unbelievable, and I order the landlord to make the laundry facilities available to the tenant.

The tenant has also applied for an order reducing rent for repairs, services, or facilities agreed upon but not provided. The tenant seeks an order setting rent at \$750.00 per month as stated

by another employee of the landlord company. I am not satisfied that the tenant has established that claim, and I dismiss it. However, if the landlord fails to provide access to and from the rental unit and laundry facilities as set out above, or removes or restricts any other amenity included in the rent, the tenant will be at liberty to apply for monetary compensation for any loss resulting from the landlord's failure.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 28, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to provide the tenant with a programmed card to access the rental unit immediately and to ensure it is re-programmed as required to allow access to and from the rental unit for the tenant and the tenant's guests until the tenancy ends in accordance with the *Residential Tenancy Act*.

I further order the landlord to provide access to the tenant for laundry facilities.

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: June 14, 2017

Residential Tenancy Branch