Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, FFL, DRI, CNC, MNRT, MNDCT, OLC, FFT

Introduction

On December 11, 2017, I issued an interim decision regarding the landlord's application for dispute resolution regarding his application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an early end to this tenancy and an Order of Possession pursuant to section 56; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

In that interim decision, I decided that this tenancy fell within the jurisdiction of the *Act* and was not a commercial tenancy as was asserted by the landlord. I also decided to allow the tenant's request to adjourn that hearing to be joined with the tenant's application already scheduled for consideration five days later. The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for the cost of emergency repairs to the rental unit pursuant to section 33; and
- a determination regarding the tenant's dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

I will not repeat the findings and determinations made in the interim decision, which remain as issued on December 11, 2017.

Both parties attended both hearings and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Between the two hearings, I heard 187 minutes of sworn

testimony from the landlord, his witnesses, and the tenant. On December 7, I heard sworn testimony from three of the landlord's witnesses, all tenants in the four-plex on the same property as the tenant's garage living space. Although I offered the tenant repeated opportunities to call a witness he identified at the commencement of the December 12 hearing, the tenant advised that the information that witness would be providing related primarily to his employment relationship with the landlord, which the landlord was not disputing. When I checked with the tenant near the end of this hearing, the tenant advised that he no longer wished to have his witness called to participate in the December 12 hearing.

Issues(s) to be Decided

Is the landlord entitled to an early end to this tenancy and an Order of Possession? Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses and damages arising out of this tenancy? Is the tenant entitled to a monetary award for the cost of emergency repairs he undertook during the course of this tenancy? Has any legal rent increase been implemented by the landlord and, if not, what is the correct monthly rent for this tenancy? Should any other orders be issued with respect to this tenancy? Are either of the parties entitled to recover their filing fees for this application from the other party?

Background and Evidence

The landlord explained that this tenancy began approximately four years ago, after the tenant responded to his listing on a popular rental website of the availability of one of his single garages at the rear of the landlord's four plex rental property. He entered into written evidence an undated copy of that advertisement, which was intended as heated storage with electricity or perhaps as a heated workshop. The landlord said that he had no idea until six or seven months after the tenancy began that the tenant, who was by then doing handyman chores for the landlord, was also living in this middle garage of a three-bay garage at the back of the landlord's four plex rental building. He maintained that his tenants advised him that the tenant was actually using this garage as his accommodations. The garage had no kitchen or plumbing when it was rented to the tenant, although the tenant appears to have added a sink, which outlets to the driveway, at some point in his tenancy. The landlord and his wife testified that they allowed the tenant to live there, as they realized he had nowhere else to live. However, they maintained that the tenant's occupancy of the garage originated as a commercial tenancy and not a residential one and that the *Act* should not apply to a garage

storage/workshop unit which does not comply with any municipal requirements for residential use.

The tenant gave sworn testimony that the landlord knew shortly after he moved into the workshop space that the tenant was also living there. He said that he showed the landlord his bed a few days after taking occupancy of the garage space he had rented. The tenant also entered into written evidence a copy of a standard Residential Tenancy Agreement (the Agreement) that stated that this tenancy began on September 1, 2013, for a monthly rent of $450.00, with a $225.00 security deposit paid on September 1, 2013.

The landlord gave sworn testimony, supported by a written statement, that he only signed this Agreement after the tenancy had commenced at the request of the tenant. He did so because the tenant needed some form of proof that he had a residence in order to enable him to be allowed access to the United States to visit one of the tenant's family members.

The landlord presented considerable written evidence and sworn testimony with respect to his assertion that the tenant presented a safety risk to other tenants and the landlord due to his erratic behaviours. Witnesses who are tenants in the landlord's four-plex residence provided written statements as well as sworn testimony regarding their concerns about the continuation of this tenancy. Many of the specific incidents and documents in support of the landlord's attempt to end this tenancy occurred after the landlord gave the tenant a handwritten one month notice to end this tenancy on September 28, 2017. The landlord also submitted evidence with respect to the tenant's unpredictable behaviours, including a November 7, 2017 incident in which the landlord called the police after the landlord claimed that the tenant threatened to kill him. The landlord and his witnesses presented additional evidence regarding an incident during the previous year when the tenant became involved in a physical altercation with some of the tenants who live in the rest of this property. The landlord also maintained that on November 9, 2017, the tenant used a rock to break a door handle to gain access to his garage living space. The landlord provided photographic evidence supported by written evidence and sworn testimony that the tenant has drilled a hole in the garage door to connect with a sink he installed, which empties directly onto the driveway outside the garage. The landlord also provided written statements supported by sworn testimony that tenants in his four-plex, as well as the tenant in the landlord's own nearby property, do not feel safe with the tenant living in the landlord's garage. Some of these tenants have young children and are concerned about their children's safety.

The tenant disputed the landlord's evidence, maintaining that the landlord was taking this action to end this tenancy in an attempt to obtain more rent. The tenant claimed that the landlord and his witnesses were lying and that some of the tenants in the four-plex had ulterior motives in testifying against him as there are written statements from the landlord that these same tenants were interested in renting the tenant's garage living space from the landlord. The tenant maintained that the landlord was fully aware that the tenant was residing in the garage space shortly after he took possession of that space.

The tenant's application for a monetary award of $20,800.00 included a request for reimbursement of $800.00 for his installation of a sink and the associated plumbing in the garage with the landlord's permission. The landlord testified that no such authorization was given to the tenant to install this sink or pay for it.

The parties agreed that the tenant had been doing handyman work for the landlord on some of his rental properties. The tenant's written evidence package also included a two-page breakdown of estimates he claimed to have provided to the landlord for work on his rental properties as well as the actual payments he received for this work. The estimates totalled $45,800.00; the amounts received from the landlord totalled $20,350.00, a difference of $25,450.00. The tenant testified that some of the monetary award he was seeking included the losses he incurred in having to stay elsewhere after November 7, 2017, because of the intermittent lack of power and insufficiency of the baseboard heaters in the rental unit since that date. The tenant produced no receipts to support his claim that he had incurred losses and testified that he has not paid anyone to stay at their residences since he left the rental unit in November 2017. The tenant clarified near the end of this hearing that he was "hoping to have some kind of legal punishment applied against the landlord."

The tenant entered into evidence photographs, text messages, emails, and a tape of one of his conversations with the landlord. In one of these messages, the landlord sought an immediate increase in monthly rent to $750.00, as the landlord did not believe he was bound by the rental increase provisions of the *Act*. Some of these interactions also confirmed that the landlord was taking this action in response to the tenant's commencement of an application for a monetary award against the landlord.

Analysis – Landlord's Application for an Early End to this Tenancy

As was noted in my interim decision, the absence of the usual services and facilities for residential accommodation in this garage does not negate the reality that the landlord

has received rent from the tenant for what the landlord clearly knew was the tenant's sole place of residence for over four years. By the landlord's own admission, the landlord has known for much of this time that the tenant was residing in the garage, which the landlord had originally rented to him as workspace.

Section 56 of the *Act* reads as follows:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property,* ***and***

it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause]… to take effect.

In this case, the landlord has issued both a 10 Day Notice for unpaid rent and a handwritten 1 Month Notice for Cause. As was noted in my interim decision, a hearing of the tenant's application to cancel the 1 Month Notice pursuant to section 47 of the *Act* was scheduled on December 12, 2017, five days after the hearing of the landlord's application for an early end to this tenancy. At the December 12, 2017 hearing, both parties confirmed that the only 1 Month Notice issued by the landlord was a September 28, 2017, handwritten 1 Month Notice.

Section 52(e) of the *Act* requires that a notice to end tenancy issued by a landlord must be on the approved Residential Tenancy Branch form. Handwritten notices to end tenancy from landlords have no legal effect. As such, I find that the landlord has not issued any notice to end tenancy for cause in accordance with section 47 of the *Act*.

At the December 7 hearing of this matter, I heard evidence from the parties as well as the landlord's witnesses with a view to considering whether it would be unreasonable or unfair to the landlord or other occupants of the residential property to have to wait the

additional five days to have the landlord's notice to end tenancy for cause under section 47 of the *Act* considered. At that time, I understood that a properly executed 1 Month Notice had been issued by the landlord to the tenant. As outlined above, this was not the case.

The landlord presented sworn testimony, written statements and witnesses to address the first portion of the test outlined above in section 56 of the *Act* regarding features of this tenancy. However, as was the case when I considered this matter on December 7, I do not find that either the landlord or his witnesses presented sufficient evidence that the concerns raised were so immediate and pressing that they could not wait until consideration of a properly issued 1 Month Notice could occur. Although it was clear from the sworn testimony and written evidence presented by other tenants in the landlord's rental properties that they do not want this tenancy to continue, their evidence and testimony spoke more to the first portion of section 56 as opposed to the immediacy of their concerns, the second portion of section 56. There was conflicting evidence and testimony regarding the landlord's claim that the tenant threatened him. I find neither the landlord nor the tenant particularly credible witnesses with respect to the incident in question, as they are both clearly motivated by their intentions regarding the landlord's attempt to end this tenancy. I dismiss the landlord's application for an early end to this tenancy, noting that there are other alternatives by which this tenancy may be ended in accordance with the *Act*.

As the landlord has been unsuccessful in his application, he bears responsibility for his $100.00 filing and I make no order to allow him to recover that fee from the tenant.

Analysis – Tenant's Application to Cancel the Landlord's 1 Month Notice

As was noted above, the landlord's 1 Month Notice of September 28, 2017 was not issued on an approved Residential Tenancy Branch form. As such, the tenant's application to cancel the 1 Month Notice is allowed. The landlord's handwritten 1 Month Notice is of no force or effect.

Analysis – Tenant's Application to Dispute an Additional Rent Increase

The tenant presented a number of documents in support of his assertion that the landlord was seeking to obtain a significant increase in the monthly rent for this tenancy. The landlord's attempts to increase the rent were apparently based on the landlord's unsubstantiated claim that this was a commercial tenancy and not one that falls within the jurisdiction of the *Act*.

As explained at the hearing, there is an established process for obtaining an increase in rent for a residential tenancy. The parties confirmed that the landlord has not issued any Notice of Rent Increase to the tenant on the prescribed Residential Tenancy Branch forms. As no legal Notice of Rent Increase has been issued by the landlord to the tenant and the tenant has never paid any amount in excess of the $450.00 set when this tenancy began, I find that there has been no legal rent increase issued by the landlord in this tenancy. The monthly rent for this tenancy remains $450.00, the amount established when this tenancy commenced, until revised in accordance with the *Act*.

Analysis – Tenant's Application for a Monetary Award

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord is responsible for the tenant's losses and any expenses the tenant incurred.

At the commencement of the December 12, 2017 portion of this joined hearing, the tenant confirmed how he had arrived at the $20,800.00 amount identified in his claim for a monetary award. In his application for dispute resolution, the tenant requested $800.00 for his installation of the sink and connection to running water and the drainage system "in order to maintain (his) space for supporting (his) job and accommodation." The remaining $20,000.00 of this claim was for the landlord's alleged underpayment of the tenant for "most of repair and renovation projects on his (the landlord's) different properties." The tenant's written evidence included a detailed breakdown of each of the repair and renovation projects where the tenant claimed that the landlord had paid him less than the agreed upon estimate the tenant had provided. This detailed breakdown included projects on a number of other properties owned by the landlord and exceeded the $20,000.00 identified in the tenant's claim for a monetary award for these items.

At the hearing, I explained that any alleged underpayment by the landlord for work performed by the tenant clearly lies beyond the jurisdiction of the tenant's application for compensation under the *Act*. The tenant will need to seek a remedy through other mechanisms if he believes that he was underpaid for the work contracted with the landlord.

With respect to the tenant's claim that he performed $800.00 of work for the landlord to install a sink and water system to his living space in the garage, the landlord

emphatically denied ever having authorized this work or having agreed to pay for it. In his written evidence and his sworn testimony, the landlord maintained that the tenant unilaterally decided to drill a hole in his garage door and connect the landlord's outside water previously used exclusively for his outside water hose to the sink the tenant installed. The landlord and some of his tenants who attended the hearing as witnesses confirmed that there is no proper outlet for the sink the tenant has installed as it drains directly to the driveway in front of the garage. Photographic evidence confirmed this testimony.

The tenant confirmed that he had no written authorization from the landlord to undertake this work, nor written confirmation that the landlord had agreed to compensate him for the tenant's costs in undertaking this work.

As I am not satisfied that the landlord is responsible for compensating the tenant for work performed by the tenant to install a sink and connect it with the landlord's water system, I dismiss the tenant's application to recover the tenant's expenses and losses associated with the tenant's work on this system without leave to reapply.

I dismiss the tenant's application for a monetary award for work he performed on the landlord's rental properties as this aspect of the tenant's claim does not fall within the jurisdiction of the *Act*.

At the December 12 hearing, the tenant maintained that he was entitled to a retroactive and an ongoing reduction in rent for the landlord's actions. The tenant alleged that there had been a loss in the value of his tenancy resulting from the landlord's withdrawal of power and heat to his rental space. Although the landlord confirmed that the power was turned off to the rental unit for two days in early November, and again for a few hours on November 7, he said that the power had been restored as of November 7. At the hearing, the tenant asked for a $1,000.00 monetary award for each of the months since he has been unable to reside in the rental unit since the landlord started removing his essential services.

The tenant's application does not specifically mention any attempt to reduce his monthly rent for services agreed to but not provided by the landlord during this tenancy. The tenant's only application for a monetary award was for the recovery of his costs in installing his sink and with respect to his claim that the landlord had underpaid him for services he had provided to the landlord. I do not find that the issues regarding the alleged rent reduction or the allegations with respect to the withdrawal of services that have not been provided by the landlord were included in the tenant's application. Rather, it appeared that the tenant raised these issues when it had become apparent that the tenant's application for the remainder of his monetary claim was unlikely to be

granted. To consider these new requests that had not been included in the tenant's application would deny the landlord a principal feature of the rules of natural justice, knowing the case against him so as to afford him an opportunity to respond accordingly. For these reasons, I find that the tenant's oral request for a rent reduction and a reduction in the value of his tenancy is not properly before me and I make no finding on this issue.

The landlord testified that the power remains connected for this rental unit and the heating source remains an electrical baseboard heating system. Under these circumstances, the landlord is required to continue providing these features, included in the original advertisement that led to the commencement of this tenancy. I make no other orders with respect to this tenancy.

The tenant's success in his application was limited to the cancellation of a Notice to End Tenancy and a rent increase both of which had no legal effect and that consequently required no application for dispute resolution on his part. Under these circumstances and as the tenant has been primarily unsuccessful in his application, I dismiss his application to recover his filing fee from the landlord.

Conclusion

As per my Interim Decision, I find that this tenancy is one that is covered under the *Act*. Monthly rent is set at $450.00, payable in advance on the first of each month, until the tenancy ends in accordance with the *Act*. The landlord's handwritten notice to end tenancy on September 28, 2017 has no legal effect nor is it in force or effect.

The landlord's application is dismissed in its entirety without leave to reapply.

The tenant's application for a monetary award for recovery of his expenses in installing and connecting the sink in his rental unit is dismissed without leave to reapply.
I make no finding on the tenant's application for a monetary award for the difference between what the landlord paid him for other repair and renovation services he performed for the landlord and what the tenant believes was owed to him. I have no jurisdiction to consider this aspect of the tenant's claim.

Neither party is entitled to recover their filing fees from one another.

I make no other orders with respect to this tenancy.

In closing, I emphasize that my decisions to dismiss the landlord's application for an early end to this tenancy and to allow the tenant's application to cancel the landlord's 1 Month Notice have no impact on any other decisions made by a delegate of the Residential Tenancy Branch to consider other applications to end this tenancy. I am aware that the landlord was also considering taking other options to end this tenancy. My decision has no impact on any of the landlord's other applications to end this tenancy for reasons other than an early end to this tenancy and the 1 Month Notice issued on September 28, 2017.

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: December 19, 2017

Residential Tenancy Branch