



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, PSF, RR, FFT

Introduction

On November 6, 2017, the Tenant applied for dispute resolution seeking to cancel a 1 Month Notice to End Tenancy for Cause. On November 30, 2017, the Tenant amended the application to include an order for the Landlord to provide a service or facility and to deduct the cost of the service from the rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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

Preliminary and Procedural Matters

The Residential Tenancy Branch (“RTB”) Rules of Procedure require that a respondent to an application for dispute resolution provide their documentary evidence to the RTB and the Applicant no later than 7 days before the hearing.

The Landlord submitted 49 pages of documentary evidence on the same day of the hearing. The Landlord's documents consist partly of written submissions from the Landlord that the tenancy does not fall under the jurisdiction of the *Residential Tenancy Act* because there is no written tenancy agreement. The remainder of the Landlord's documents appear to be copies of documents that the Tenant submitted.

The Landlord argued that he was never served with the Tenant's Application and Notice of Hearing package. I note that the Landlord's documents contain a Delivery Notice dated "November 10" indicating that the Landlord has mail to be picked up from the post office.

The Tenant testified that he served the Landlord with the Notice of Hearing using registered mail. The Tenant provided copies of a registered mail receipt dated November 9, 2017, in support of his testimony that the Landlord was served by registered mail. The Tenant also provided copies of conversations he had with the Landlord regarding the upcoming hearing.

The Tenant also provided a copy of a Registered Mail receipt for his amended application that he sent to the Landlord on November 30, 2017.

Regardless of whether or not the Landlord picked up the mail, I find that the Landlord was served with the Application and Notice of Hearing in accordance with sections 89 and 90 of the Act. The Landlord is deemed served with the Tenant's Application; Notice of Hearing; and documentary evidence on November 14, 2017, which is 5 days after the mail was sent.

The Landlord had another individual in attendance at the hearing and he indicated that this person was a director of his company and was going to participate in the hearing. The person refused to identify themselves and provide their name. The person stated that she wished to remain anonymous. As it would be unfair to accept testimony from an unidentified person who is unknown to the Tenant, the unidentified person was excluded from the hearing pursuant to section 7.20 of the RTB Rules of Procedure.

The Landlord asked for an adjournment and explained that he is involved in discussions with ministry officials. When asked why the discussions were relevant to his request for an adjournment, the Landlord refused to provide details. Since I find that the Landlord was served with the Notice of Hearing package and has had adequate time to be prepared for this hearing, and since there is no information on why an adjournment is

needed or how it will assist in a resolution, I find that there are no compelling reasons before me to allow for an adjournment. The Landlord's request was denied.

The Landlord was absent for a period of 15 minutes during the hearing. At 11:30 am the Landlord suddenly and without notice disconnected from the call. The Landlord re-announced his presence 15 minutes later at 11:45 am. The Landlord was asked why he disconnected and why it took 15 minutes to reconnect and he responded that he disconnected from the hearing so he could have a conversation with his Director. I find that the Landlord's intentional action of leaving the hearing was unreasonable.

The Landlord was informed that the hearing had proceeded in his absence and that I heard testimony from the Tenant regarding the request for a rent reduction based on the Landlord's cancellation of cable and internet services.

The Landlord testified that because the Act does not apply to the tenancy, he is revoking the 1 Month Notice To End Tenancy For Cause dated October 26, 2017. The Landlord testified that he did not agree to the tenancy so it does not apply. He testified that the Tenant failed to provide him with a copy of a tenancy agreement and he testified that the property was purchased with the intention to run a commercial business.

The Landlord was informed that if he revokes his 1 Month Notice To End Tenancy For Cause, and I find that this is a tenancy under the Act, the tenancy would continue. The Landlord stated that he understood and he confirmed that he is revoking the 1 Month Notice To End Tenancy For Cause dated October 26, 2017.

Issues to be Decided

- Does the Act apply to the tenancy arrangement?
- Does the Landlord have Cause to end the tenancy?
- Is the Tenant entitled to a rent reduction due to the loss of a service or facility?

Background and Evidence

The Tenant testified that his tenancy began in March 2007, and is a month to month tenancy. He testified that the current Landlord purchased the rental property in July 2016. He testified that he lives in a self-contained suite on the lower floor of a residential property. He testified that the Landlord lives in the two floors above him.

The Tenant testified that he initially paid \$700.00 rent but he currently pays \$750.00 per month rent. He testified that the current Landlord increased his rent by \$50.00 back in January 2017. He testified that his rent includes the service of cable tv and internet service.

The Landlord testified that the Tenant was living in the unit when he purchased the property in 2016. He stated that he has no idea how long the Tenant has lived in the rental unit. He testified that he tried to get a copy of the tenancy agreement from the realtor but was not able to get one.

The Landlord issued a 1 Month Notice To End Tenancy For Cause dated October 26, 2017, but has withdrawn the 1 Month Notice. I therefore cancel the 1 Month Notice To End Tenancy For Cause dated October 26, 2017.

The Tenant testified that the Landlord continued to provide cable and internet service when the Landlord purchased the property in July 2016. A few weeks after receiving the Landlord's 1 Month Notice in October 2017, the Tenant submitted that he came home on November 20, 2017, to find that the Landlord had disconnected the cable and internet. The Tenant testified that he never received any notice from the Landlord that the Landlord was terminating the services.

The Tenant testified that he called the RTB and followed their advice and subsequently sent the Landlord a letter dated November 21, 2017, asking the Landlord to correct the issue within a reasonable period or else he would apply for compensation. The Tenant provided a copy of the letter.

The Tenant testified that the Landlord flatly refused to reinstate the cable and internet, so the Tenant made his own arrangements for the service.

The Tenant testified that he arranged for the exact same level of cable access and internet service that was provided by the Landlord and he is seeking compensation from the Landlord for the cost of the service for the past two months.

The Tenant is also seeking a reduction in the monthly rent in the amount of \$95.00 as of February 1, 2018, and onwards. The Tenant provided a copy of the cable and internet bill in the amount of \$212.24 for the period of November 23, 2017, to January 21, 2018.

Despite informing the Landlord when he reconnected at 11:45 am that the Tenant made submissions regarding the claim for a loss of services and a rent reduction, the Landlord did not make any specific submissions regarding these issues. The Landlord continued to make submissions that the *Act* does not apply to the tenancy.

Analysis

The Act provides a definition of a tenancy agreement. It provides:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 5 of the Act provides that Landlords and Tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect.

Section 12 of the Act provides that the standard terms are terms of every tenancy agreement whether the tenancy agreement was entered into on or before, or after, January 1, 2004, and whether or not the tenancy agreement is in writing.

Section 27 of the Act states that a Landlord may terminate or restrict a service or facility, if the Landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

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

The Landlord inherited the Tenant and the terms and conditions of the tenancy agreement when he purchased the property in July 2016. It was the Landlord's obligation to inquire about the terms of the tenancy and obtain a copy of the tenancy agreement at that time.

I find that the tenancy is a residential tenancy that falls under the authority of the *Act*. I reject the Landlord's submissions that the tenancy is a commercial tenancy and that the *Act* does not apply since he never agreed to the terms of the tenancy.

The Landlords stated intention to run a commercial business from the rental property has no bearing on the whether or not the Tenant has a residential tenancy agreement. The Tenant is not using his rental unit for business purposes.

I find that the Landlord purchased the property and inherited the tenancy and is responsible to comply with the pre-existing terms of the agreement.

I find that the provision of cable and internet services is included in the rent. I find that the Landlord was providing the service and suddenly stopped without written notice to the Tenant in November 2017, and without a reduction in the monthly rent. The Landlord is required to provide the service, or reduce the rent in an amount that is equivalent value for the cost of the service.

I order the Landlord to pay the cost of \$212.24 incurred by the Tenant for the cost of cable and internet for the past two months.

I accept the Tenant's testimony and evidence that his cable and internet costs are \$95.00 per month. I find that the Tenant has suffered a reduction in the value of his tenancy in the amount of \$95.00 per month. I authorize the Tenant to pay \$655.00 per month for rent beginning February 1, 2018, and each month thereafter, subject to any legal rent increases.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to pay for the cost of the filing fee for the application. The Tenant is authorized to withhold \$100.00 from one (1) future rent payment.

The Tenants request to be reimbursed \$34.00 for his registered mail costs is dismissed. Granting compensation for the cost of serving documents is not specifically permissible in the *Act*, and the Tenant lives directly below the Landlord with other means of service available to him.

Conclusion

The Landlord withdrew the 1 Month Notice To End Tenancy For Cause dated October 26, 2017. The 1 Month Notice is set aside.

The Landlord terminated the cable and internet service and failed to provide compensation that was equivalent to the value of the reduction of service.

The Tenant is authorized to withhold the amount of \$312.20 from one (1) future rent payment for the costs he incurred for cable and internet service from November 2017, to January 2018, and the cost of the application for this hearing.

The Tenant suffered a reduction in value of the tenancy and is authorized to reduce future rent payments in the amount of \$95.00 per month as of February 1, 2018.

I order that the tenancy will continue until ended in accordance with the Act.

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: January 23, 2018

Residential Tenancy Branch