



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GAREB HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OLC, LRE

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 3, 2018 ("10 Day Notice"), pursuant to section 46;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("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; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she was the owner, manager and operator of the landlord company named in this application and that she had permission to speak on its behalf as an agent at this hearing. This hearing lasted approximately 41 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to include the claims for monetary compensation, the order regarding the landlord's right to enter the

rental unit and the order for the landlord to comply. The tenant filed an amendment to include these claims and the landlord confirmed receipt of the amendment form.

Issues to be Decided

Should the landlord's 10 Day Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of portions of their dispute.

Both parties agreed to the following final and binding settlement of portions of their dispute at this time:

1. Both parties agreed that this tenancy is continuing until it is ended in accordance with the *Act*;
2. The landlord agreed that the landlord's 10 Day Notice, dated January 3, 2018, was cancelled and of no force or effect;
3. Both parties agreed that the tenant will contact the relevant Ministry in order to determine whether rent cheques can be sent to the tenant directly instead of the landlord, so that the tenant can pay monthly rent directly to the landlord by the first day of each month;
4. The landlord agreed to be sensitive to the tenant's medical conditions in its interactions with the tenant during this tenancy;
 - a. Both parties agreed that during emergency situations, the landlord may need to contact the tenant in person at her rental unit.

I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that issue.

Analysis

The tenant seeks \$550.00 for the stress that she said she had to endure because of the landlord. She said that the landlord served her with the 10 Day Notice instead of calling the Ministry when they did not receive her rent cheque. She stated that the Ministry sent her rent cheque to the wrong location. Both parties agreed that the tenant's rent was paid within 5 days of the 10 Day Notice being issued to the tenant. The tenant explained that the Ministry told her that she had to speak to them through a third party because of previous issues and that she had to call her mother in order to assist her.

The tenant provided a letter from her mother indicating she had to take time off work and make a number of inquiries in order to assist the tenant. The tenant claimed that the landlord insisted on having rent cheques delivered to it directly from the Ministry so it is up to them to follow up if they do not receive a cheque. She maintained that she suffers from post-traumatic stress disorder ("PTSD"), she provided medical documentation to confirm same, and stated that the landlord is required to accommodate her disability to the point of undue hardship.

The tenant claimed that the landlord came banging on her rental unit door early in the morning on January 3, 2018, in order to serve her with the 10 Day Notice and to perform plumbing repairs. She stated that the landlord could have been more courteous to her medical condition by texting or calling her first to advise her, instead of causing her PTSD symptoms to flare up again.

The landlord disputes the tenant's monetary claim, stating that her daughter only banged on the tenant's rental unit door because it was an emergency plumbing issue which was causing leaking from the tenant's rental unit into another unit below. The landlord said that she sent her daughter to find the tenant at the rental unit and she did not have the tenant's phone number handy in order to call her because it was an emergency.

The landlord claimed that she is not required to phone the Ministry in order to check on the tenant's rental payments and that the tenant had authority to do so, and could direct that her rent cheques to be sent to her personally. She stated that she has been dealing with the Ministry for 15 years and she does not call the Ministry on behalf of any tenants because she is not required to do so. She maintained that she told the tenant to

call a third party who she has been dealing with for 5 years, in order to assist the tenant with the Ministry but the tenant failed to do so. She said that she only signed a shelter "intent to rent" form for the tenant to demonstrate where she is living, not in order to take responsibility for the tenant's rent inquiries.

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenant's application for \$550.00 without leave to reapply. The tenant was unable to justify the amount being claimed. I find that the tenant failed to provide documentation from the Ministry indicating that she is unable to make inquiries on her own account and that the landlord is required to do so. I find that the landlord is legally entitled under section 46 of the *Act*, to issue a notice to end tenancy for failure to pay rent if the Ministry sent the cheque to the wrong location and the tenant's rent is not paid. I find that the landlord attending at the tenant's rental unit in order to deal with an emergency repair is justified under section 33 of the *Act*, as the tenant even confirmed during the hearing that the landlord did not violate section 29 of the *Act* or enter her rental unit illegally. I find that the tenant failed parts 1 and 3 of the above test.

Conclusion

The landlord's 10 Day Notice, dated January 3, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's monetary application for \$550.00 is dismissed without leave to reapply.

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: February 02, 2018