Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's Application made January 9, 2018: ERP; OLC; PSF; FF

- amended January 11, 2018: to add MNDC
- amended February 9, 2018: to add CNR

Introduction and Preliminary Matters

This is the Tenant's Application for Dispute Resolution seeking to cancel a Notice to End Tenancy for Unpaid Rent; an Order that the Landlord comply with the Act, regulation or tenancy agreement; an Order for emergency repairs; and Order that the Landlord provide services and facilities required by law; compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

Both parties were present at the Hearing and gave affirmed testimony. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

This matter was originally scheduled to be heard by teleconference on March 8, 2018, at 11:00 a.m. Due to technical difficulties, the matter was rescheduled to March 9, 2018, at 1:30 p.m. An Information Officer from the Residential Tenancy Branch contacted both parties and provided them with the new Hearing information and dial in codes.

The Tenant testified that she mailed the Notice of Hearing documents (including her amended January 11, 2018, application) by registered mail to the Landlord on January 12, 2018. She stated that she mailed her Application which was amended on February 9, 2018, to the Landlord by registered mail on February 16, 2018. The Tenant provided the tracking numbers for the registered documents.

The Landlord testified that the Tenant did not provide him with pages 2 and 3 of the Residential Tenancies Fact Sheet.

The audit notes in the Residential Tenancy Branch's electronic filing system indicate that the Landlord called the Residential Tenancy Branch on February 2, 2018, to enquire about the contents of pages 2 and 3 of the Residential Tenancies Fact Sheet. The Landlord was advised by an Information Officer that the Tenant was required to provide the Landlord with a complete copy of the Fact Sheet, and that the Branch would forward a complete copy to the Landlord at his request. Pages 2 and 3 of this Fact Sheet explains the hearing process; how documents must be served; time frames for service of documents; how to calculate time frames; how to amend an application; how to make a cross application; and how to reschedule or adjourn an application. The audit notes also indicate that the Information Officer provided the Landlord with information on how to make a cross application.

The Landlord testified that he hand delivered his documentary evidence to the Tenant "last Monday" (March 5, 2018). The Landlord's evidence was not served within the required 7 days prior to the Hearing date. The Landlord's documents consisted of 36 pages including written submissions; a copy of the tenancy agreement; a copy of the Notice to End Tenancy; a Monetary Order Worksheet for a monetary order claim of $3,139.36; and copies of invoices, receipts and utility bills.

It would appear from the Landlord's evidence that the Landlord wished to make a claim for a monetary award. I explained to the Landlord that a party cannot make an application for dispute resolution by simply providing documentary evidence to another party's claim. The Landlord must make his own application, pay the filing fee (or apply for a fee waiver), and properly serve the Tenant with notice of his application. The Landlord has not made, or served the Tenant with, his own Application for Dispute Resolution with respect to a monetary claim and therefore, I explained to him that I would not be making any Orders in that regard. With respect to the remainder of the Landlord's documents that are relevant to the Tenant's claim, they were either already provided by the Tenant or they are written submissions for which the Landlord was advised that he is at liberty to give orally.

The Tenant advised that the "emergency repairs" and "services and facilities" which she referred to in her Application was with respect to snow clearing and for the provision for water at the rental unit. These are no longer factors as the snow has been cleared and the provision of water to the rental unit has been returned.

Rule 6.2 of the Residential Tenancy Rules of Procedure provides that an arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply. I determined that the Tenant's application for a monetary award is not sufficiently related to her request to cancel the Notice to End Tenancy and I dismissed this portion of her claim, with leave to reapply.

For the reasons set out above, the parties were advised that the only matter that would be dealt with during this Hearing is the Tenant's application to cancel the Notice to End Tenancy for Unpaid Rent.

Issue(s) to be Decided

Is the Notice to End Tenancy issued February 2, 2012, a valid notice to end the tenancy?

Background and Evidence

Each party gave lengthy submissions with respect to this tenancy. In this Decision, I have recorded only the evidence that is relevant to the "Issue(s) to be Decided" as set out above.

This tenancy began on November 1, 2014. Monthly rent is $740.00, which includes a charge of $40.00 towards water, and is due on the first day of each month. Rent does not include utilities or heat. The Tenant paid a security deposit and a pet damage deposit, each in the amount of $350.00, for a total of $700.00 in deposits.

The rental unit is part of a duplex. The Landlord lives in the other part of the duplex.

The Landlord and his agent SR gave the following relevant evidence:

The Landlord testified that he served the Tenant with the Notice to End Tenancy by posting it to the Tenant's door on February 2, 2018, and by mailing it by registered mail to the rental unit on February 5, 2018.

The Landlord's agent testified that the Tenant did not pay full rent for the months of January, February, and March, 2018. She stated that the Tenant is also in arrears in the amount of $526.26 for 2017 hydro bills, and $190.81 for the January 28, 2018, hydro bill. The Landlord's agent also estimates that the Tenant will owe $190.81 for

January 28 to March 28, 2018, based on the last hydro bill. She stated that the Tenant also owes the Landlord for wood (for heating) in the amounts of $350.00 for 2016, $350.00 for 2017, and $175.00 for 2018, for a total of $875.00.

The Landlord's agent acknowledged that the Tenant made the following partial payments towards rent:

January 1, 2018	$351.50 (paid February 5, 2018)
February 1, 2018	$570.00 (paid February 5, 2018)
March 1, 2018	$540.50 (the Landlord's agent did not state when this payment was made)

The Landlord gave the Tenant receipts "for use and occupancy only" for the partial rent payments.

On February 12, 2018, the Tenant also paid the Landlord the following amounts towards hydro bills:

October – November hydro bill	$119.21
December – January hydro bill	$190.81

The Tenant gave the following relevant testimony:

The Tenant acknowledged receipt of the Notice to End Tenancy on February 5, 2018.

She testified that the Landlord did not give the Tenant any copies of any hydro bills at all until February 9, 2018, which was after the Notice to End Tenancy was issued and served. She testified that she paid the Landlord for her share of hydro on February 12, 2018, pursuant to the bills she was provided on February 9th. She stated that she has never received a bill for the cost of wood and never agreed to pay a certain amount for the wood each year. The Tenant testified that for the first two years of the tenancy, the Tenant paid the Landlord $500.00 a year for wood, but decided not to use wood anymore and was going to heat her home with electricity instead. She stated that she gave the Landlord a note on October 1, 2017, telling him that she was not using wood any more

The Tenant submitted that she asked the Landlord twice to clear the snow, but the Landlord said it was not his job. She stated that the snow was so deep on the steep ½ km-long driveway that neither she nor emergency vehicles could get up the driveway.

She stated that she got stuck on several occasions while trying to negotiate the driveway. The Tenant submitted that this was an emergency situation because of the inability for emergency vehicles, or the Tenant, to use the driveway. The Tenant stated that the Landlord was at home while the snow plough was plowing the driveway and therefore knew it was being ploughed and could have finished the job himself, or paid for the cost.

The Tenant pays $40.00 a month for water, but she was without water from December 21, 2017 to January 9, 2018, and had to haul her own water and had to drive about 10 kms to other facilities in order to shower.

The Tenant stated that she deducted the cost of snow ploughing the rental property from rent due to the Landlord because she was advised by an Information Officer that she could deduct the cost of emergency services from rent. The Tenant provided copies of invoices for the cost of snow removal, along with a written statement from the person who removed the snow.

The Tenant testified that she deducted the following amounts from rent for January and February, 2018:

Rent for January:	
Snow removal (December 22, 2017 invoice)	$231.00
Snow removal (December 29, 2017 invoice)	$157.50
Rent for February:	
Snow removal (January 9, 2018)	$85.00
Snow removal (January 20, 2018)	$85.00
	$548.50

The Landlord's agent gave the following reply:

The Landlord's agent stated that the Landlord always gave the Tenant copies of the hydro bills when they were due, but the Tenant always "conveniently lost them".

The Landlord's agent stated that the Tenant has changed the locks to the rental unit and will not give the Landlord a key.

The Landlord's agent testified that the Landlord was also without water from December 21, 2017, to January 9, 2018. She submitted that this occurred because the Tenant

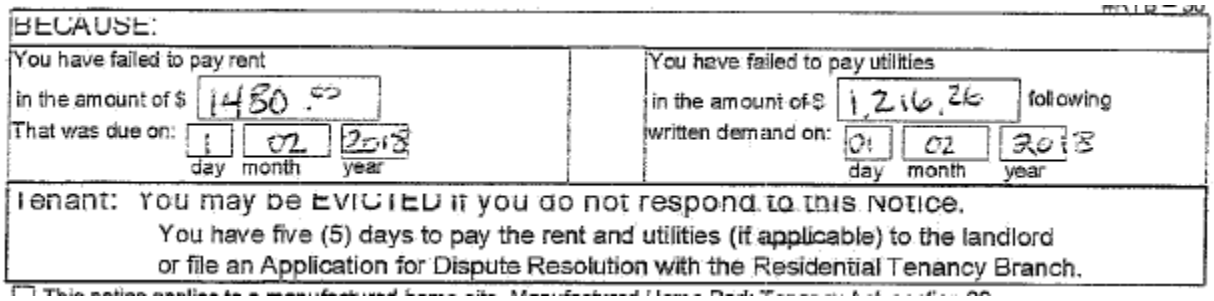
flipped the breaker for the water pump and the pipes froze. Because of the time of the year, they could not get a tradesman in to make repairs until January 9, 2018.

The Tenant gave the following additional submissions:

The Tenant stated that she flipped the breaker to the pump because it was leaking. She asked that I make a ruling with respect to whether or not she could turn off breakers in the breaker box that was inside her own home.

Analysis

The Notice to End Tenancy provides the following information with respect to the amount of rent and utilities owed as of the date of issuance (February 2, 2018):



BECAUSE:

You have failed to pay rent		You have failed to pay utilities	
in the amount of $	1480.00	in the amount of $	1,216.26 following
That was due on:	1 (day) 02 (month) 2018 (year)	written demand on:	01 (day) 02 (month) 2018 (year)

Tenant: You may be EVICTED if you do not respond to this Notice.
You have five (5) days to pay the rent and utilities (if applicable) to the landlord or file an Application for Dispute Resolution with the Residential Tenancy Branch.

When a landlord seeks to end a tenancy, the onus is on the landlord to prove, on the balance of probability, that the tenancy should end for the reason given on the notice to end tenancy. In this case, the Notice provides that the Tenant owed $1,216.26 in unpaid utilities on February 2, 2018, for which written demand had been given on February 2, 2018.

Section 46(6) of the Act provides:

> (6) If
>
> > (a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and
> > (b) the utility charges are unpaid **more than 30 days after the tenant is given a written demand for payment of them,**
>
> the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

[My emphasis added.]

In this case, I find that the Landlord did not provide sufficient evidence that:

1. the Tenant was required to pay $350.00 a year for wood; and
2. the Landlord provided the Tenant with hydro bills or wood bills, or for written demand for payment of them, more than 30 days before the Notice was issued.

Based on the evidence provided by both parties, I find that the Notice to End Tenancy for Unpaid Rent issued February 2, 2018 is not a valid notice to end the tenancy because the Landlord was not entitled to treat the unpaid utilities as unpaid rent at the time that the Notice was issued.

There is no provision in the tenancy agreement that the Tenant is responsible for removing snow at the rental property. Residential Tenancy Policy Guideline #1 provides that a landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

Section 33 of the Act provides:

> **33** (1) In this section, **"emergency repairs"** means repairs that are
> (a) urgent,
> (b) necessary for the health or safety of anyone or for the preservation or use of residential property**, and**
> **(c) made for the purpose of repairing**
> **(i) major leaks in pipes or the roof,**
> **(ii) damaged or blocked water or sewer pipes or plumbing fixtures,**
> **(iii) the primary heating system,**
> **(iv) damaged or defective locks that give access to a rental unit,**
> **(v) the electrical systems, or**
> **(vi) in prescribed circumstances, a rental unit or residential property.**
> (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
> (3) A tenant may have emergency repairs made only when all of the following conditions are met:
> (a) emergency repairs are needed;

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

[My emphasis added.]

Although the Landlord is responsible for snow removal at the rental property, it is important to note that I find that the snow removal does not fall within the definition of Section 33(1)(c) of the Act. “Prescribed circumstances” refers to situations where a regulation has been made. In this instance, no regulation has been made to set out prescribed circumstances under the regulation.

I make no finding with respect to whether or not the Tenant is entitled to recover the cost of snow removal. The Tenant is at liberty to make another application for compensation, if she so desires.

The Tenant is strongly cautioned against disrupting the power to the water pump by throwing the breaker.

Section 33(1)(3) of the Act provides that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change. Therefore, pursuant to the provisions of Section 62(3) of the Act, I hereby ORDER the Tenant to provide the Landlord with a key to the rental unit immediately.

Conclusion

The Notice to End Tenancy for Unpaid Rent issued February 2, 2018, is cancelled. The Tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I find that the Tenant is in arrears of rent in the amount of $351.50 for the month of January, 2018 ($740.00 - $231.00 - $157.50); arrears in the amount of $170.00 for the month of February, 2018 ($740.00 - $85.00 - $85.00); and arrears in the amount of $199.50 for the month of March, 2018.

The Tenant's application to cancel the Notice to End Tenancy had merit and I find that she is entitled to recover the cost of the $100.00 filing fee from the Landlord. The Tenant may deduct $100.00 from rent due to the Landlord, pursuant to the provisions of Section 72 of the Act.

The remainder of the Tenant's Application is dismissed with leave to reapply.

The Tenant is HEREBY ORDERED to immediately provide the Landlord with a copy of the key which gives access to the rental unit.

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: March 13, 2018

Residential Tenancy Branch