



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed January 11, 2018, wherein the Tenant sought to cancel a 2 Month Notice to End Tenancy for Landlord's Use issued on January 1, 2018 (the "Notice"), and an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulation* and/or the tenancy agreement.

The hearing was scheduled by teleconference at 10:30 a.m. on March 12, 2018. Only the Tenant called into the hearing. She was provided the opportunity to give affirmed testimony and make submissions in oral and documentary form.

As the Landlord failed to call into the hearing service of the Tenant's application materials was considered. The Tenant testified that she served the Landlord by registered mail by sending the package on January 17, 2018. Tracking information provided for by Canada Post confirms the package was signed for by the Landlord on February 6, 2018. I therefore find the Landlord was duly served as of February 6, 2018 and I proceeded with the hearing in his absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Tenant confirmed that she had incorrectly noted the address of the rental unit on

her Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Residential Tenancy Act*, and *Rule 4.2* of the *Residential Tenancy Branch Rules of Procedure* I amend the Tenant's Application to correctly note the address of the rental unit.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Regulation* or the tenancy agreement?

Background and Evidence

The Tenant testified that she rents a one bedroom home and pays \$600.00 per month. She stated that the Landlord refuses to accept payment by cheque or e-transfer and that he insists on cash payments; further, despite her requests, the Landlord refuses to issue receipts for her cash payments. She stated that she has been concerned about this as he has also communicated to the Ministry of Social Development and Poverty Reduction that she does not pay rent, which is false, but which has resulted in a disruption to the housing portion of her benefits. She further stated that she had him sign receipts which she had drafted confirming payment; unfortunately, she was only able to get him to sign four receipts despite paying rent each month.

The Tenant confirmed that she had yet to pay her March rent of \$600.00 as the housing portion of her benefits was discontinued due to the Landlord refusing to issue cash receipts; further she confirmed that she was awaiting this outcome of this hearing.

The Tenant also testified that the Landlord enters her rental unit without her knowledge or consent. She stated that the Landlord suggests he is coming in for a lawful purpose (such as checking on the unit) but instead comes in and yells at her. She further stated that he has sent her text messages wherein he writes that he believes he can enter the unit without her permission, whenever he likes. The Tenant provided a copy of this text messages in evidence.

The Tenant also stated that the Landlord changed the locks on the front gate which prevented her access to the rental property. While she was able to get him to change the lock back, she worried that he will do so again now that his Notice to End Tenancy is cancelled.

The Tenant claimed that the Landlord also restricts her access to services and facilities when he is angry. She said that on one occasion she was sick in bed and the Landlord shut off the power because she would not speak to him. A review of the text messages submitted in evidence by the Tenant includes one where the Landlord wrote: "I will put the power back on when you talk to me." Another text message shows the Landlord threatening to put a lock on the electrical panel.

The Tenant stated that the Landlord is not new to any of this as he has several other rental properties and should know his rights and responsibilities under the *Residential Tenancy Act*.

The Tenant stated that when she moved in, the Landlord promised the rental unit would include a washer and dryer, but then the Landlord refused to re-install the washer and dryer (which he claimed was removed for "servicing") because he wanted her to leave. The Tenant stated that as a consequence she is now spending \$50.00 per month washing clothes elsewhere.

The Tenant further stated that the Landlord allowed her to use the freezer in the shop and then he restricted her access to the freezer.

The Tenant also stated that the Landlord threatened to remove all the appliances for "servicing" which she believes is just another threat to intimidate her. She also stated that he threatened to "throw her stuff out" in the snow at the end of the month.

Analysis

After considering the undisputed testimony and evidence of the Tenant and on a balance of probabilities I find as follows.

Residential Tenancy Branch Rules of Procedure provides that when a Tenant applies to cancel a notice to end tenancy the Landlord must prove the reasons for issuing the notice on a balance of probabilities. The Landlord failed to attend the hearing to provide evidence in support of the Notice; I therefore find that he has failed to prove the reasons for issuing the Notice and **I hereby cancel the Notice. The tenancy shall continue until ended in accordance with the Act.**

The Tenant applied for an Order that the Landlord comply with the *Residential Tenancy Act*. The evidence submitted by the Tenant, and in particular the text messages

between the parties, shows the Landlord's high handed behaviour and threatened actions which are in clear violation of the *Act*.

I find that the Tenant pays \$600.00 per month in rent for a one bedroom home. I also find the Landlord has attempted to raise the rent from \$600.00 to \$1,000.00, which is contrary to the *Act* and the *Regulations*. In a text message dated November 16, 2017, the Landlord writes that he can raise the rent by "market standards". Notably, such increases are no longer permitted.

- 1. I Order that the Landlord comply with Part 3 of the *Residential Tenancy Act*, and Part 4 of the *Residential Tenancy Regulation* with respect to any rent increases.**

I accept the Tenant's evidence that she has provided cash to the Landlord and the Landlord has refused to provide her receipts, which he is obligated to do.

- 2. I therefore Order, pursuant to section 26(2) of the *Act*, that the Landlord to provide the Tenant with receipts for cash payments including the months: August 15-31 2017, September 2017, October 2017, November 2017, December 2017, January 2018, and February 2018 and March 2018 once the payment is made in accordance with this my Decision. The Landlord shall provide receipts for cash payments for all months following the issuance of this my Decision.**

I accept the Tenant's testimony and evidence that the Landlord did not install the washer and dryer as promised and that these appliances were included in her tenancy. I further accept that she has been forced to spend \$50.00 per month on laundry as a result.

- 3. Pursuant to sections 62(3) and 65(1) of the *Act*, I authorize the Tenant to reduce her monthly rent by \$50.00 per month, to \$550.00 per month as compensation for the loss of a washer and dryer.**
- 4. The Tenant shall be credited the sum of \$375.00 representing the 7.5 months she has been without this service (August 15-31, September, October, November, December 2017; and January, February and March 2018) such that her rent payment for March 2018 is \$225.00.**

I also accept that the Landlord has denied the Tenant access to the freezer, which I also find is included in her rent. The Tenant is at liberty to apply for a further reduction in her rent pursuant to section 65(1) of the *Act* for the value of the freezer.

I also accept the Tenant's evidence that the Landlord has threatened to remove the furniture from the rental unit as well as cut off the electrical utility. In a text message from the Landlord to the Tenant on November 16, 2017, he threatened to move her out the following day because she hung up on him.

The Landlord is reminded of section 27 of the *Act* which prohibits him from terminating or restricting any service or facility. For clarity, I reproduce that section as follows:

Terminating or restricting services or facilities

- 27** (1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
 - (b) 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.

The Landlord is also reminded of section 28 of the *Act* which protects a Tenant's right to quiet enjoyment; again, for clarity, I reproduce that section as follows:

Protection of tenant's right to quiet enjoyment

- 28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
- (a) reasonable privacy;
 - (b) freedom from unreasonable disturbance;
 - (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Landlord is also reminded that he is restricted from entering the rental unit pursuant to section 29; for clarity, I reproduce that section as follows:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (c) the landlord has an order of the director authorizing the entry;
- (d) the tenant has abandoned the rental unit;
- (e) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

5. I Order that the Landlord shall not enter the rental unit unless in accordance with section 29 of the Act.

Should the Landlord continue to enter the rental unit in violation of the *Act*, and in breach of her right to quiet enjoyment, the Tenant shall be at liberty to apply for monetary compensation pursuant to sections 7, 27 and 67 of the *Act*.

Further, should the Landlord restrict or terminate any services or facilities, or remove any furniture or appliances from the rental unit, the Tenant shall be at liberty to apply for monetary compensation and a further rent reduction pursuant to sections 7, 65(1), and 67 of the *Act*.

The evidence before me indicates the Landlord has acted in a very high handed manner and in violation of the *Act*. He is reminded that continued breaches of the *Act* and *Regulations* may result in administrative penalties being levied against him pursuant to Part 5.1 of the *Act*.

Conclusion

The Tenant's Application for an Order canceling the 2 Month Notice to End Tenancy for Landlord's Use is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's application for an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the tenancy agreement is granted. The terms of my Orders are set out in this my Decision.

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 16, 2018

Residential Tenancy Branch