



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC CNR DRI FFT LRE

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order that the landlord allow access to the unit or site for the tenant and his guests pursuant to section 70;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 30 minutes. The tenant attended and, with the assistance of his advocate, was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlord personally with the application for dispute resolution dated January 26, 2018 and evidentiary materials on that date. The

tenant said that he also served the landlord personally with the amendment to the application dated February 7, 2018 on that date. I find that the landlord was served with the tenant's application for dispute resolution, amendment and evidence in accordance with sections 88 and 89 of the Act.

The tenant testified that the landlord demanded the hearing be adjourned but the tenant did not agree to an adjournment. The tenant said that the landlord forged the tenant's signature in a letter submitted into evidence agreeing to an adjournment.

Pursuant to Rule of Procedure 5.1 a hearing will be rescheduled when the Residential Tenancy Branch receives written consent from both the applicant and respondent no less than 3 days before the scheduled hearing. I accept the tenant's testimony that the signature found on the landlord's letter agreeing to an adjournment is a forgery and that they do not consent to an adjournment.

Rule of Procedure 5.2 provides that when parties cannot agree to reschedule a hearing, a party or party's agent may make a request at the hearing. Rule 7.3 further provides that if a party or their agent fails to attend the hearing, the arbitrator may conduct the hearing in the absence of that party.

As I find that the tenant did not provide written consent to reschedule the hearing and neither the landlord or an agent attended the hearing to make a request for adjournment, I proceeded with the hearing as scheduled.

Issue(s) to be Decided

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

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an order or possession?

Should the tenant be authorized to change the locks on the rental unit? Should the landlord be ordered to allow the tenant access to the rental unit? Should an order be made suspending the landlord's right to enter the rental unit?

Should an order be made regarding a disputed additional rent increase?

Should the tenant be authorized to reduce the rent for services agreed upon but not provided?

Should the landlord be ordered to make repairs to the rental unit?

Is the tenant entitled to a monetary award for damages or loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant provided undisputed evidence regarding the following facts. This month-to-month tenancy began in November, 2016. The monthly rent is \$600.00 payable on the first of each month. A security deposit of \$300.00 was paid to the landlord at the start of the tenancy and is still held by the landlord. The rental unit is a basement suite in a detached home. The upper unit is occupied by other tenants. The landlord does not reside at the rental building.

The tenant testified that the landlord has served him with a 10 Day Notice and 1 Month Notice. No copy of either notice was submitted into written evidence.

The tenant said that the landlord has informed him that he will be charging the tenant additional rent but has not issued a Notice of Rent Increase.

The tenant said that on at least 7 occasions during the tenancy he has found the landlord inside the rental unit without prior notice or authorization. The tenant testified that the landlord informed him that he was allowed to enter freely as he was the property owner. The tenant said that he has been informed by his roommate that the landlord was found in the unit on several other occasions.

The tenant testified that there was an instance where the landlord locked the tenant out of the rental unit for a period of days and the tenant was unable to access the rental unit or go to work. The tenant is claiming \$3,000.00 for lost wages due to the landlord's actions.

The tenant testified that the door and window of the rental unit was broken during an attempted break-in on January 13, 2018. The tenant said that the damage was reported to the landlord on that date but the landlord has refused to make repairs. The tenant gave evidence that as of the date of the hearing the door and window remain broken.

Analysis

The tenant provided little documentary evidence in support of his application. While he provided cogent and reasonable testimony, the onus is on the applicant to show on a balance of probabilities the evidentiary basis for the relief they seek.

Section 46(4) of the *Act* provides that the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice.

Section 47(4) of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If a tenant files an application to dispute a notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the Notice.

While the tenant has applied to dispute both the 10 Day notice and 1 Month Notice, no copy of either notice was submitted into written evidence. There is insufficient evidence to conclude that a proper Notice to End Tenancy, conforming with the form and content requirement of section 52 of the *Act* was issued. Accordingly, I allow the tenant's application to cancel both the 10 Day Notice and 1 Month Notice. This tenancy will continue until ended in accordance with the *Act*.

The tenant applies to dispute a rental increase but there is no evidence that the tenant was served with a Notice of Rent Increase. Based on the evidence submitted I find that there is no basis for this portion of the application to dispute a rent increase as there is no evidence that the landlord is increasing the monthly rent. The rent for this tenancy will continue at \$600.00 per month until changed in accordance with the *Act*.

I accept the tenant's evidence that the landlord has entered the rental unit on multiple occasions without proper notice or authorization. I accept the tenant's evidence that the landlord has continued this pattern of behavior despite being informed that they are may not enter the suite. I also accept the tenant's undisputed testimony that the landlord has locked the tenant out of the rental unit on one occasion.

Based on the foregoing I find it appropriate to issue an order that the landlord comply with the provisions of the *Act* and refrain from entering the rental unit without proper notice.

While the tenant said that they currently have access to the rental unit and an order is not necessary, I further order that the landlord allow the tenant to access the rental unit in accordance with the *Act* and tenancy agreement.

I order that the tenant is authorized to change the locks to the rental unit at the landlord's expense. The tenant may arrange for the locks to the rental unit be changed and the cost of doing so may be deducted from the next monthly rent owed.

I find that there is insufficient evidence in support of the tenant's application for a repair order or to reduce rent for repairs not performed. While the tenant testified that the front door and window to the rental unit are broken, I find that there is little evidence in support of the tenant's testimony. No photographs were submitted and there are no copies of written correspondence between the tenant and landlord requesting repairs. While the tenant referenced filing a police report a copy of the report was not submitted into written evidence nor was a file number provided in oral testimony. In the absence of documentary evidence I find that the tenant's testimony is not sufficient to find that there are issues with the rental unit requiring repairs. I dismiss this portion of the tenant's application.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence in support of the tenant's claim for damages and loss. While the tenant states that he missed work and suffered loss of income for those days there is no documentary evidence in support of his claim. The tenant failed to provide pay stubs or letters from employers stating that he was absent from work. No information was provided as to his expected hourly wages. The tenant attributes the loss to a period when the landlord would not permit him access to the rental unit but no evidence was provided as to when this occurred. I find that there is insufficient evidence to conclude that the tenant has suffered damages or loss and consequently dismiss this portion of the tenant's application.

The tenant also makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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;

I find that the tenant has provided sufficient evidence by way of his testimony and written submissions that the landlord's repeated unauthorized intrusion into the rental unit has caused the tenant a loss of quiet enjoyment. The tenant provided evidence about the disruption and inconvenience, and how he does not feel secure in his own home.

Under the circumstances I find it appropriate to issue a one-time monetary award in the tenant's favour in the amount of \$100.00 for loss of quiet enjoyment, approximately 15% of the monthly rent.

As the tenant's application was successful in part I find that the tenant is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I issue the following orders.

This tenancy will continue until ended in accordance with the Act. The 10 Day Notice and 1 Month Notice are cancelled and of no further force or effect.

The monthly rent for this tenancy will continue as \$600.00 until increased in accordance with the Act.

The tenant is authorized to change the locks on the rental unit. The tenant may deduct the cost of changing the locks from the next monthly rent payable to the landlord.

The landlord is ordered to refrain from entering the rental unit except in accordance with the Act. The landlord is ordered to allow the tenant access to the rental unit in accordance with the Act and tenancy agreement.

I issue a monetary award in the amount of \$200.00 for damages and loss and the filing fee for this application. As this tenancy is continuing, I allow the tenant to recover his \$200.00 award by a one-time reduction of his monthly rent by that amount on his next monthly rental payment to the landlord

The balance of the tenant's application 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: March 26, 2018

Residential Tenancy Branch