



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC DRI ERP FFT LAT LRE MNDCT OLC PSF RP RR

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application. As both parties acknowledged receipt of each other's evidence, I find that both parties were duly served with each other's evidence in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 1 Month Notice dated April 14, 2018, which was posted on their door on the same date, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary compensation for money owed under the *Act*, regulation, or tenancy agreement?

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlords?

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

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental unit?

Is the tenant entitled an order to allow access to or from the rental unit or site for the tenant or the tenant's guests?

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

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

Background and Evidence

This month-to-month tenancy began in December 2013, with currently monthly rent set at \$746.95, payable on the 15th day of the month. The monthly rent was set by the Arbitrator at that amount after the hearing held on February 1, 2018. The landlord currently holds a security deposit in the amount of \$550.00, and the tenant continues to reside in the rental unit.

The landlord issued the notice to end tenancy dated April 14, 2018 providing 6 grounds:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
4. the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property;
5. the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant; and
6. the tenant has engaged in illegal activity that has, or is likely to, jeopardize the lawful right or interest of another occupant or the landlord.

The landlord testified in the hearing, and submitted evidence, in support of the 1 Month Notice. The landlord testified that the tenant and his family have been involved in several incidents that caused the landlord and other occupants to fear for their safety. The landlord testified that the tenant would bang on the door that connects the landlord's unit to the tenant's. The landlord submitted video footage in their evidence to support this. No charges against the tenant or tenant's family were confirmed.

The landlord also testified that they have been attacked on more than on occasion by the tenant. Furthermore the landlord testified that they have been victims from mail theft, including stolen cheques, and believe the tenant is the thief.

The landlord included a letter from their home insurance broker notifying them that their home would become uninsurable if the tenant continued to operate their at-home tutoring business.

The tenant admits that he was running a tutoring business inside the home, but has ceased this after the landlord notified the tenant that it was not allowed. The tenant disputes the landlord's claims, stating that the main reason the landlord wished to end the tenancy was to increase the rent, which is demonstrated by the landlord's previous attempts to increase the rent. The tenant applied to dispute any future rent increases attempted by the landlord.

In addition to the application to cancel the 1 Month Notice, the tenant applied for monetary compensation for the landlord's failure to abide by the orders made after the hearing held on February 1, 2018 by an Arbitrator. In the February 19, 2018 decision the Arbitrator made several orders to the landlord, which the tenant testified the landlord has failed to abide by since the orders were made:

"Based on section 27 of the Act and the landlord's obligation to provide laundry facilities or reduce rent to compensate for the termination of laundry facilities, I order that the landlord allow the tenant HB access to the laundry unit a minimum of 2 regular days per week for a minimum of 6 designated hours each day."

"Based on the requirement of section 32 of the Act, that the landlord maintain the property in a manner that complies with health and safety standards and based on the tenant's allegations that there is mold in the rental unit, I order the landlord and tenant to split the cost of a qualified mold inspector. The inspection will take place on or before April 30, 2018. Any action necessary as a result of the inspection are required to begin by May 30, 2018."

"The tenants also applied for repairs of the oven and stove. The tenants provided undisputed testimony that they have requested repairs to the oven and stove. Therefore, I order that the landlord make investigation and repair as needed to the oven and stove, including the hood vent by March 31, 2018. "

The landlord did not dispute that the landlord had never provided keys to the laundry room as they feared for their safety, and preferred not to have contact with the tenant for their safety.

The landlord testified that the tenant was the uncooperative party, and has failed to communicate with them to make arrangements to fulfill the Arbitrator's orders relating to the repairs. The tenant testified that they have not received any communication from the landlord. The landlord testified that they communicated with the tenant by posting letters on the tenant's door.

The tenant provided a monetary worksheet in their application indicating the following monetary order requested:

Item	Amount
Laundry	\$575.00
Filing Fee	100.00
Cost of Registered Mail	21.00
Total Monetary Order Requested	\$696.00

The tenant provided receipts for the laundry they had paid for since the landlord did not give the tenant access to the laundry as ordered by the Arbitrator in the previous decision.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 46 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. The tenant filed their application on April 25, 2018, eight days after the date the tenant is considered deemed to have received the 1 Month Notice. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy.

Although the landlord alleged that the tenant was stealing the mail, the landlord failed to provide sufficient evidence support that the tenant had stolen the landlord's mail. I am not satisfied that the tenant had stolen the landlord's mail or engaged in any illegal activity. The landlord did not provide any confirmation that any of the tenant has been charged under the Criminal Code of Canada. I find that the landlord has failed to

establish that they have grounds to end this tenancy on the grounds that the tenant or person allowed on the property by the tenant has engaged in any illegal activity.

The landlord also expressed concern over the tenant's home-based business. Although the tenant admitted to operating the business, the tenant testified that he no longer does this on the landlord's property after being warned not to do so. I accept the tenant's evidence that he no longer operates his business on the landlord's property.

I have reviewed the evidence submitted by the landlord, and although I find that there is evidence of a strained relationship between the landlord and the tenant, I am not satisfied that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; or that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. I find that there is conflicting testimony as to which party engages the other in the ongoing disputes, and as I am unable to determine, based on the evidence before me, which is the initiating party, I am not satisfied that the landlord has established that the tenant has unreasonably disturbed the landlord or other occupants.

For the reasons cited above, I find that the landlord has not met their burden of proof in establishing that they have cause to end this tenancy under section 47 of the *Act*, and accordingly I am allowing the tenants' application for cancellation of the 1 Month Notice dated April 14, 2018. The tenancy will continue until ended in accordance with the *Act* and tenancy agreement.

I accept the tenant's undisputed testimony that the landlord failed to comply with the order made by the Arbitrator in the decision dated February 19, 2018 by not giving the tenant access to the *"laundry unit a minimum of 2 regular days per week for a minimum of 6 designated hours each day."* As a result of the landlord's failure to comply with the Arbitrator's order, the tenant suffered a monetary loss, and supported that loss with receipts. On this basis, I allow the tenant's a monetary order in the amount of \$575.00 for the cost of the laundry.

It was also undisputed that the landlord has failed to abide by the Arbitrator's orders in the decision dated February 19, 2018. I order that the landlord comply with the orders previously made, immediately and without any further delay. I order that the landlord communicate and respond to the tenant's written requests in writing. If the landlord fails to comply with the orders of an Arbitrator, or with the *Act*, or regulation, and if the tenant suffers any further losses due to the landlord's failure to do so, the tenant may file an

application to recover the losses associated with the landlord's failure to comply with the orders and the *Act*, including an application for a rent reduction for the services not rendered.

I am dismissing the tenant's application for a rent reduction at this time as the tenants were reimbursed the cost of doing laundry.

I am not satisfied that the tenant has provided sufficient grounds to support that an order is required to suspend or set conditions on the landlord's right to enter the rental unit. I find that the landlord's posting of notes on the property is not a contravention of section 29 of the *Act*. I do, however, remind the landlord of Section 30 (1) of the *Act* that states:

a "landlord must not unreasonably restrict access to residential property by
(a) the tenant of a rental unit that is part of the residential
property, or
(b) a person permitted on the residential property by that
tenant."

I dismiss the tenant's application to change the locks to the rental unit, as I find the tenant has not provided sufficient evidence to support that this is necessary.

I dismiss the tenant's application disputing a rent increase, and I find that the tenant has not provided sufficient evidence to support any new attempts by landlord to increase the rent since the last hearing.

I dismiss the tenant's application for an order for emergency repairs as I find the tenant has not provided sufficient evidence to support that any new orders are required under section 33(1) of the *Act*. As stated above, I order that the landlord comply with the orders made by the Arbitrator at the previous hearing.

I allow the tenant to recover the cost of the filing fee for this application. As section 72 of the *Act* does not allow for the reimbursement with the other costs associated with filing an application such as the cost of registered mail, I dismiss this portion of the tenant's monetary claim.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice dated April 14, 2018. The 1 Month Notice of is of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I order that the landlord comply with the previous orders made by the Arbitrator in the February 19, 2018 decision, which includes allowing access for the tenant to do laundry, and responding to written communication from the tenant to maintain and perform repairs.

I find that the tenant is entitled to \$575.00 for the cost of doing laundry due to the landlord's failure to comply with the order made by the Arbitrator after the previous hearing. I find that the tenant is entitled to recover the \$100.00 filing fee for this application.

I allow the tenant to implement the above monetary award of \$675.00 by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$675, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The tenant's application for the cost of registered mailing is dismissed without leave to reapply.

The remainder of the tenant's application is dismissed with 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: June 29, 2018

Residential Tenancy Branch