



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the 10 day Notice to End Tenancy dated May 1, 2018.
- b. An order for emergency repairs
- c. A monetary order
- d. An order for more time to file this Application for Dispute Resolution
- e. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- f. A repair order
- g. An order for the reduction of rent for repair, services or facilities agreed upon but not provided.
- h. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

There is a great deal of animosity between the parties. At time I found that the evidence of both parties lacked credibility.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant on May 1, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 5, 2018. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to cancel the 10 day Notice to End Tenancy dated May 1, 2018.
- b. Whether the tenant is entitled to an order for emergency repairs
- c. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to an order for more time to file this Application for Dispute Resolution
- e. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- f. Whether the tenant is entitled to a repair order
- g. Whether the tenant is entitled to an order for the reduction of rent for repair, services or facilities agreed upon but not provided.
- h. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy began on July 1, 2016. The present rent is \$620 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$300 at the start of the tenancy.

The tenant filed a previous application which was heard on March 26, 2018. The landlord was not present. That decision is binding on both parties.

The tenant testified he paid the rent for May on May 4 or 5 and the landlord gave him a receipt. He testified he gave the landlord a copy of this document in June. The landlord denies receiving the rent money for May or the receipt.

The landlord further testified the rent for June has not been paid. The tenant acknowledges he has not paid the rent for June 2018.

Application to Cancel the 10 day Notice to End Tenancy:

The landlord testified the rent is due on the first day of each month. Initially he testified he personally served the 10 day Notice to End Tenancy on the Tenant on May 1, 2018. The tenant acknowledged he received the Notice on the first day of each month. He submits the Notice is not valid because the landlord failed to give him a full day to pay the rent before giving him the Notice to End Tenancy and that the Notice did not have the second page. He also submits he paid the rent. However, the receipt he relies on indicates that he is \$20 short. The landlord subsequently changed his testimony to say that he served the Notice to End Tenancy on May 2, 2018.

I do not accept the testimony of the landlord. The 10 day Notice to End Tenancy indicates it was served on the May 1 2018. The landlord's original testimony confirmed this. His revised testimony is not credible.

The law provides that a landlord must give a tenant the complete due date to pay the rent before he serves a 10 day Notice to End Tenancy. The landlord failed to do that in this case. As a result I ordered that the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue until it is ended in accordance with the law.

Application to Reduce Rent for Repairs, services or facilities agreed upon but not provided:

The tenant sought a monetary order in the sum of \$1000 for the landlord's failure to fix a front door. The tenant testified he feels unsafe in the rental unit because of the damage to the door. The landlord testified the tenant broke the front door after he returned home after being arrested and discovered that his roommate had changed the lock. He further testified that the tenant made the door repair and changed the lock back shortly after he returned in the middle of January. The tenant denied that is responsible for the damage to the door and that the door still poses a safety risk.

The previous arbitrator in a hearing on March 26, 2018 dealt with this claim and dismissed the tenant's claim for compensation and a repair order of the front door and a broken window. I determined the Tenant failed to provide sufficient proof that he is entitled to a reduction of rent or compensation for this claim. As a result I dismissed this claim without leave to re-apply.

Application for a Monetary Order:

The Application for Dispute Resolution filed by the tenant sought compensation in the sum of \$8000 for emotional distress caused by the service of illegal document and lying in his allegation that he caused the damage. He testified he was forced to miss work because of the poor condition of the rental unit which lead to a hospital stay from April 18 to 23 thereby causing him to miss work.

The tenant failed to present medical evidence to support this claim. The letters from friend alleging his pneumonia was caused by the mould from the rental unit is insufficient to prove this claim.

The tenant failed to provide evidence that would support his claim for loss of work. The previous arbitrator dismissed the tenant's claim for damages and loss (including loss of income) on the basis the tenant failed to present sufficient evidence to prove this claim. I determined the tenant failed to prove this claim and as a result I dismissed this claim without leave to re-apply.

In summary the Tenant's failed to prove this monetary claim and it is dismissed without liberty to re-apply.

Application for an Order for emergency repairs and a repair order:

The Application for Dispute Resolution filed by the Tenant seeks an order that the front door be replace and that the landlord remedy a black mould problem. After carefully considering all of the evidence I determined that it is appropriate to make a repair order.

The landlord testified that the Tenant damaged the door. The Tenant denies this. The tenant has a roommate living with him at the present time and there are other tenants in the upper portion of the rental property. Those tenants are put at risk if the door has not been repaired. I am satisfied based on the evidence presented that there is a problem with mould in the rental unit. The tenant's roommate is put at risk because of the mould.

As a result I ordered that the landlord shall do following order:

- a. Repair the front door.
- b. Remedy the black mould problem.

I further ordered the repair work be completed with 14 days of receiving this order.

Application for an order that the landlord reimburse the cost of emergency repairs made by the tenant during the tenancy:

The tenant made a claim of \$2000 to reimburse the landlord for the cost of emergency repairs. I dismissed this claim as the Tenant failed to provide evidence to prove this claim. The tenant failed to prove that he paid out money on behalf of the landlord or that he undertook work on behalf of the landlord to make emergency repairs.

Application for More time to make this Application

The tenant withdrew this claim as it is not necessary. The Application for more time to make this Application is dismissed as withdrawn.

Application for an order that the landlord comply with the Act, regulation and/or tenancy agreement:

The Application for Dispute Resolution dealing with this claim alleges the landlord forged his signature when requesting an adjournment of the previous application. That application went ahead. The tenant testified he intends to turn this matter to the police. This claim alleges the landlord failed to provide sufficient notice before entering his suite. The previous arbitration ordered that the landlord comply with the Act and refrain from entering the rental unit without proper notice. Section 29 of the Act provides 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;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) 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).

There is no need to make a further order.

Conclusion:

In conclusion I ordered that the 10 day Notice to End Tenancy dated May 1, 2018 be cancelled. I ordered that the landlord repair the front door and remedy the mold problem with 14 days of receiving this order. All other claims raised in the application including the Tenant's claim for a monetary order are dismissed without leave to re-apply.

This decision is final and binding on the parties.

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 27, 2018

Residential Tenancy Branch