



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR RP ERP LRE MNDCT

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The 10 Day Notice to End Tenancy is dated August 14, 2018 to be effective August 24, 2018 and the tenant confirmed it was served by posting it on his door on August 14, 2018. The tenant /applicant gave evidence that they served the Application for Dispute Resolution personally and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for unpaid rent pursuant to section 46;
- b) To order the landlord to do emergency repairs;
- c) To order the landlord not to enter their suite illegally and to obtain compensation for repair work done by the tenant; and
- d) To obtain a rent rebate or compensation for repairs not done and for damage to their plants.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent so sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they are entitled to compensation or a rent rebate and if so, in what amount?

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in June 2011 under a previous owner and continued from August 2011 under this owner, it is a month to month tenancy, rent is \$550 a month and

a security deposit of \$275 was paid in June 2011 and transferred to this owner. The landlord served a Notice to End Tenancy for unpaid rent of \$550 in August 2018 and states the tenant has not paid rent since. A statement of account is in evidence showing the tenant paid \$2070 total rent from January 2018 to July 2018 but owed rent of \$3300 for that time (\$550 x 6) leaving a balance of \$1230. In addition, the tenant owes \$1650 for rent from August to October 2018. In addition, the landlord said on his statement that the tenant had a balance owing of \$1150 at the end of December 2017 from previous rent. However, he filed no accounting records to validate amounts owed from previous years.

The tenant said he owes no rent but the landlord refused to give him rent receipts so he is unable to prove this. He asks to cancel the Notice to End Tenancy. He said at one time Social Assistance gave him money and he cashed their cheques and paid the landlord. Now he works and pays the landlord cash. He provided no bank or pay records to show how his rent was paid.

In evidence are some copies of texts or emails between the tenant and the landlord. On January 17, 2018, the tenant says he needs to borrow \$100 till Friday, on April 8, 2018, he states he needs to borrow \$20 and on May 28, he requests the landlord to complete information so he can get government assistance. Then he says on May 29, 2018, he got a new job and requests the loan of \$20. On June 1, 2018, he says he lost the job and has \$200 for the landlord but has no food and on July 4, 2018, he asks for the landlord's signature so he may receive government assistance. On July 8, 2018, he admits he owes money to the landlord and on July 26, 2018 says he has \$250. The landlord's records of payments show the tenant made partial payments in January, March and July 2018 which correlates approximately with the email information.

The tenant claims \$13,220 in his amendment made on August 24, 2018 for work he performed for the landlord which involved 92 hours of his time. He also claims compensation for his two cedar trees in planters which he said the landlord killed when he sprayed poison. He said they were given to him by his parents before they died and they hold great significance for him. He included the card of a conservation officer and alleges he told him that poison was sprayed and they would investigate. There are no written results or comments from the conservation officer in evidence. The landlord denies spraying anything. He states he has babies and would not spray anything that might injure anyone. His wife also said nothing was sprayed. The landlords point out that it was an unusually dry summer and they did not water so plants did dry up and die. The tenant maintains he watered his cedars and they died. The tenant estimates the cedars would cost about \$200 each but they were a gift and very valuable to him.

The tenant also requests repairs be done. There are leaks in his unit. He agreed he did not let the plumber in because he did not show him ID and proof of insurance. He did not know if he had WCB coverage and the plumber refused to provide a clearance letter from WCB proving he was insured and in good standing. The landlords pointed out the Police were called and the officer confirmed the identity of the plumber but this did not satisfy the tenant. In his evidence, the tenant said the police had no right to tell him to let this plumber in. The tenant also noted the landlord had entered his suite illegally to do plumbing work; he said it was not an emergency, just a small leak, and the landlord had made a mess before when he did repairs. He points out that the suite is illegal, the smoke detectors which he disabled were just battery operated and mounted too close to the stove and should be wired according to the Bylaws. He refused new flooring installation in the unit because of the amount of time it would take to move his belongings.

The tenant notes the problems with internet and the changes in cable service. He states this costs him time and money as he has his own business. He agrees he got free laundry as a partial trade-off. The landlord said he cannot control outages of service providers.

The landlord requested if the tenant is unsuccessful, that they be granted an Order of Possession effective October 31, 2018 (as a concession to give the tenant time to move). They also agreed to give him a rent receipt for each year of his occupancy since August 2011.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

Section 26 of the Act requires that a tenant pay rent on time whether or not the landlord fulfills their obligations under the Act. I find the tenant owes rent to the landlord. Although he disputed the Notice to End Tenancy in time, I find insufficient evidence that he paid his rent as alleged. I find the landlord's evidence more credible as it is supported by a written ledger of detailed amounts owing since January 1, 2018 and I find some corroboration of this in the texts or emails sent at the time. I dismiss the Application of the tenant to cancel the Notice to End Tenancy. I find the tenancy ended in August 2018. In these circumstances, section 55 of the Act states the landlord is entitled to an Order of Possession. An Order of Possession is issued effective October 31, 2018. Pursuant to section 55(4) of the Act, I find the landlord is also entitled to a

Monetary Order for the unpaid rent. I find them entitled to a monetary order for \$3720 for rent owed from January 1, 2018 to October 31, 2018. I decline to award a further amount for monies allegedly owed prior to 2018 as I find insufficient evidence to prove these amounts.

In respect to the tenant's claims for repairs not done, I find he denied access to a plumber to do the necessary repairs although the police confirmed the identification of the plumber. Regarding his claim of illegal entry of the landlord, I find the landlord is not required to provide notice for emergency repairs. Although the tenant contended the repairs of leaking water was not an emergency repair, I find section 33 of the Act would define leaking water as an emergency repair necessary for the purpose of preserving property (s. 33 (1) (b)). In respect to his claim that the landlord entered his unit illegally to attach the Notice to End Tenancy to his door, I find the tenant's door was open and the landlord stepped over the threshold to attach the Notice and he had two witnesses with him. I do not find this was illegal entry into his unit as the landlord did not go beyond stepping over the threshold. I dismiss these claims of the tenant.

Since the tenancy is ended, I decline to order repairs be done.

Regarding the tenant's claim of poison being sprayed and killing his two cedar trees, I find insufficient evidence to support his claim. Although he provided photographs of the plants browning and perhaps dying and a card of a conservation officer, I find insufficient evidence that this was a result of an action by the landlord. There was no report from the conservation officer to support the statements of the tenant.

In respect to the tenant's claim for compensation for work done for the landlord, I find the landlord's evidence is that they never requested or consented to such work. There is no contract in evidence or receipts. I dismiss this claim of the tenant.

Conclusion:

I dismiss the Application of the tenant in its entirety without leave to reapply. His filing fee was waived.

I find the landlord entitled to an Order of Possession effective October 31, 2018 and to a monetary order as calculated below: I find them entitled to retain the security deposit to offset the amount owing.

Rent owed per ledger Jan.-July 2018	1230.00
Rent owed Aug, Sept., Oct. 2018	1650.00
Less security deposit(no interest 2009-11)	-275.00

Total Monetary Order to Landlord	2605.00
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I HEREBY ORDER THE LANDLORD TO PROVIDE A RECEIPT FOR EACH YEAR TO THE TENANT FOR TOTAL RENT PAID FROM JULY 2011 TO OCTOBER 2018.

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: October 09, 2018

Residential Tenancy Branch