



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR CNL OPL LRE

Introduction

Both parties attended the hearing and gave sworn testimony. The 10 Day Notice to End Tenancy is dated September 3, 2018 to be effective September 3, 2018 and The Two Month Notice for Landlord's use of the property is dated August 28, 2018 to be effective October 31, 2018 and the tenant confirmed both were served personally. The effective date on the 10 Day Notice is automatically corrected to September 13, 2018 pursuant to section 53 of the Residential Tenancy Act. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated September 5, 2018 and Amendment dated September 7, 2018 personally and the landlord agreed he received them and the tenant's evidence. 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 cancel a Notice to end tenancy for landlord's use of the property;
- c) For compensation pursuant to section 51(2) of 12 times the monthly rent because the landlord has not used the unit for the stated purpose; plus compensation for disturbance of their peaceful enjoyment, moving costs, hydro and days missed from work and undue stress;
- d) To order the landlord to comply with section 29 of the Act and not illegally enter the unit; and
- e) To recover the filing fee for this application.

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? In the alternative, has the landlord proved on the balance of probabilities that they require the home for their own occupation or that of a close family member? 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 and if so, in what amount?

Background and Evidence

Both parties 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 October 1, 2017 on a fixed term to September 30, 2018. Rent was \$1500 a month and a security deposit and pet damage deposit, each in the amount of \$750 was paid. The landlord first served a two month Notice to End Tenancy for landlord's use of the property on August 28, 2018 to be effective October 31, 2018. The tenant's did not pay rent for September so the landlord served a 10 Day Notice to End Tenancy for unpaid rent on September 3, 2018 to be effective September 13, 2018 (as automatically corrected).

The tenants gave evidence as follows:

- They had expected a long term tenancy and were very upset when they received the two month Notice.
- The landlord was bullying and harassing them and entering their property without Notice.
- They talked to the Residential Tenancy Branch and decided to move out September 30, 2018 but to wait for the hearing today before removing all their belongings from the home. They agreed they have not handed over the keys or possession.
- They said they gave a Notice to End Tenancy in September by email and withheld September rent in accordance with section 49 of the Act.

The tenants claim as follows:

- a) \$1500 x 12 months rent in compensation because the landlord put the house up for sale and is not going to occupy it himself;
- b) \$500 for hydro for the landlord's unit. They did not know exact usage numbers as it is on one meter but they note their bills did not decrease from winter use and there was a slight increase. No hydro bills are in evidence.
- c) \$1500 security deposit
- d) \$500 for cleaning and filing this application
- e) \$10,000 for failure to protect their peaceful enjoyment. He yelled, called them names and threatened in front of their children
- f) \$300 moving van expenses.

The landlord supplied evidence as follows:

- He spends 6 months in Canada and 6 months elsewhere every year. He was shocked at the condition of the house when he returned in spring.
- He had the house listed for sale last year but it did not sell.
- The current listing has expired and he fully intends to move into the house and do some repairs and clean up and live there for at least 6 months.
- The tenants did not refill the propane tank so he considered the small amount of the hydro for his use of a stove and hot water tank would be compensation for that..
- He submitted a claim for \$4156 for various items including September and October rent but had not filed an Application.

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

Analysis:

I find from the evidence of both parties that there was some lack of knowledge of the applicable provisions of the Act so legal mistakes were made by each. The Act provides:

Tenant may end tenancy early following notice under certain sections

50 (1) If a landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property] or 49.1 [landlord's notice: tenant ceases to qualify], the tenant may end the tenancy early by

(a) giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and

(b) paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice, unless subsection (2) applies.

(2) If the tenant paid rent before giving a notice under subsection (1), on receiving the tenant's notice, the landlord must refund any rent paid for a period after the effective date of the tenant's notice.

(3) A notice under this section does not affect the tenant's right to compensation under section 51 [tenant's compensation: section 49 notice].

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(3) The director may excuse the landlord or, if applicable, the purchaser who asked the landlord to give the notice from paying the tenant the amount required under subsection (2) if, in the director's opinion, extenuating circumstances prevented the landlord or the purchaser, as the case may be, from

(a) accomplishing, within a reasonable period after the effective date of the notice, the stated purpose for ending the tenancy, or

(b) using the rental unit for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the tenant gave what they may have thought was notice in an email, part of which reads as follows:

"I just spoke to the Residential Tenancy Branch and email is not an acceptable way to communicate. We would like to end this tenancy in the right way peacefully, with a mutual agreement. Please hand deliver notices, if you do not deliver them by hand, you need to allow us 3 days to respond. We are hoping to be out by the end of Sept so we will take our one month free for Sept" The email went on to advise the landlord about the security deposit obligation (section 38) and entitlement to additional compensation if he did not occupy the home as he stated in his Two Month Notice.

The landlord advised the tenants by email that they were not entitled to a free month as they did not pay first and last month rent which is incorrect. However, I find the tenants did not serve a valid Notice to End Tenancy. I find they sent an undated, unsigned email stating they would like to end the tenancy by mutual agreement and then said, "We are *hoping* to be out by the end of Sept". I find this is uncertain in its terms, is undated and unsigned. Furthermore, section 88 of the Act provides for legal methods to serve Notices and email is not one of them. Therefore, I find the tenants' email is an invalid Notice to End Tenancy. I note they state in their own email that they received this advice concerning communication from the Residential Tenancy Branch.

As noted above, section 50 (1) provides that if the landlord gives a tenant notice to end a periodic tenancy under section 49 [landlord's use of property, the tenant may end the tenancy early by giving the landlord at least 10 days' written notice to end the tenancy on a date that is earlier than the effective date of the landlord's notice, and paying the landlord, on the date the tenant's notice is given, the proportion of the rent due to the effective date of the tenant's notice. I find the tenant did not observe this provision as her Notice to End Tenancy was invalid and they paid no rent for September..

As the Notice to End Tenancy was invalid, I find the 10 Day Notice to End Tenancy for unpaid rent in September was valid. I find the tenancy ended on September 13, 2018 (as corrected). The tenants' application to set aside the Notice is dismissed. I find the landlord entitled to recover rent for September in the amount of \$1500 pursuant to section 55 of the Act and to an Order of Possession effective two days from service.

I find according to section 51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

I find the tenant was **entitled to withhold the last month's rent** (not rent for September) from the landlord and it is deemed to be paid to the landlord. Therefore, I find the tenant not responsible for rent for October 2018.

In respect to the further claim for compensation by the tenant:

I find their claim for \$1500 x 12 months rent in compensation because the landlord put the house up for sale and is not going to occupy it himself is based on *section 51 of the Act which stated (2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if*

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

I find the landlord gave sworn testimony that he does intend to occupy the unit himself and the listing has expired. I find he has not sold the property and intends to move in. Therefore, I find section 51(2) and (3) do not apply. I dismiss this portion of their claim.

Regarding their claim for hydro, I find insufficient evidence of the cost of the additional hydro as there were no bills in evidence and they were unable to state the approximate additional cost. I dismiss this portion of their claim.

Regarding their claim for the refund of their security deposit, I find section 38 of the Act provides the landlord has 15 days from the later of the tenants' vacating the property and providing their forwarding address in writing to either refund the deposit or file an Application to claim against it. Since the weight of the evidence is that they have not entirely vacated the unit, I find their application for the refund of their \$1500 security deposit is premature. I find they insisted in the hearing they had until October 31, 2018 to vacate the property pursuant to the Two Month Notice. I dismiss this portion of their claim with leave to reapply.

In respect to the \$500 claimed for cleaning and filing this application, I find insufficient evidence that the landlord is responsible to pay them for cleaning the unit. I dismiss this portion of their claim. Filing fees are awarded in section 72 of the Act in the amount of \$100.

Regarding their claim for \$10,000 for failure to protect their peaceful enjoyment, I find this is based on their evidence of an instance where they state the landlord yelled, called them names and threatened them in front of their children. The landlord said he told the tenants on August 26, 2018 that they were getting a Two Month Notice and they walked inside their house and he did bang on the door and call them. He also agreed he had come on the property to bait mouse traps and move a pool so animals would not be drinking from it and to remove the realtor's sign. I find the landlord has a legal right to deliver Notices to End Tenancy but based on this evidence, I find the landlord may have been unnecessarily assertive in delivering the Two Month Notice and this likely significantly disturbed the peaceful enjoyment of the family including the children who felt threatened with losing their home. Although he may have had good intentions, I find insufficient evidence that he served them Notice of Entry pursuant to section 29 of the Act to enter and bait mousetraps or move a pool. Section 28 of the Act provides the landlord must protect the peaceful enjoyment of their tenants and section 29 requires a landlord to give written notice at least 24 hours in advance of entry. I find the weight of the evidence is that the landlord failed to protect the peaceful enjoyment of the tenants by being too assertive before their children and failed to give notice of entry for items such as baiting mouse traps and moving a pool. I find the tenants entitled to compensation of \$500 for these infringements of their rights. This amount will be deducted from rent found to be owed to the landlord.

In May 2018, the landlord also dug up some speed bumps and put up a 20km sign in the driveway. In August 2018, he gave a message that he was intending to inspect the house in a week. In respect to the removal of speed bumps, I find the road was a joint road to the tenants' unit and to his unit located some distance away so I find removing speed bumps and posting a sign is not an interference with their peaceful enjoyment. I find entering to inspect with legal notice is not a violation of the Act so I find the tenants not entitled to further compensation for these actions.

I find the Act does not provide for compensation for moving van expenses. The tenants were served two legal Notices to End Tenancy and I find their expenses for moving are not an obligation of the landlord. I dismiss this portion of their claim.

Regarding the landlord's damage claim, I decline to consider it as this is the tenants' application and he has not filed an application.

Conclusion:

I dismiss the application of the tenant to cancel the 10 Day Notice to End Tenancy. I find the landlord entitled to an Order of Possession pursuant to the 10 Day Notice to End Tenancy. The Order will be effective two days from service.

Pursuant to section 55 of the Act, I find the landlord entitled to recover rent for September as calculated below.

Pursuant to the Two Month Notice to End Tenancy, I find the tenants do not owe rent for October 2018.

Pursuant to sections 28 and 29 of the Act, I find the tenants entitled to \$500 compensation plus recovery of their filing fee. This will be deducted from the monetary order for the landlord.

Pursuant to section 38 of the Act, I dismiss the application of the tenant for a refund of their security deposit as it is premature. I give them leave to reapply after they have vacated and provided their forwarding address in writing to the landlord.

Calculation of Monetary Order:

Unpaid rent September 2018	1500.00
Less amount awarded to tenant	-500.00
Less tenant's filing fee	-100.00
Total Monetary Order to Landlord	900.00

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 18, 2018

Residential Tenancy Branch