



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNR ERP FFT LRE MNDCT

Introduction

This hearing was convened in response to an application by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 47 of the *Act*;
- cancellation of the landlord’s 10 Day Notice for Unpaid Rent or Utilities pursuant to section 46 of the *Act*;
- for the landlord to perform emergency repairs to the rental unit pursuant to section 33 of the *Act*;
- a monetary award pursuant to section 67 of the *Act*;
- for the landlord to provide services required by law or the tenancy agreement; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing which lasted 55 minutes by way of conference call. The landlord was assisted by his property manager, M.O. All parties present were given full opportunity to be heard, to present evidence and to make submissions

The tenant confirmed receipt of a both the 1 month notice to end tenancy and the 10 Day Notice to end tenancy. I find the tenant was duly served with both notices in accordance with the *Act*.

Issue(s) to be Decided

Can the tenant cancel the notices to end tenancy? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award?

Should the landlord be directed to comply with the *Act* and provide services to the tenant? Should the landlord be directed to make emergency repairs to the unit?

Can the tenant recover the filing fee?

Background and Evidence

The tenant said this tenancy began in September 2016. Rent was \$1,125.00 per month and deposits of \$500.00 (security) and \$250.00 (pet) paid at the outset of the tenancy continue to be held by the landlord.

The tenant acknowledged that no rent was paid for July 2018 and confirmed it was for this reason that the landlord had served him with a 10 Day Notice to End Tenancy. The tenant said he was instructed not to pay rent because the tenancy was in dispute.

The landlord said he was seeking enforcement of both notices to end tenancy. The 1 Month Notice to End Tenancy ("1 Month Notice") was given to the tenant after alleged repeated late payments of rent. Specifically, the landlord said rent was late in October, November and December 2016, late on nearly every month in 2017 and again in 2018. The landlord said rent was only paid on time in February, March and May 2018. The landlord said rent was often partially paid and disputed the tenant's assertion that he allowed the tenant to pay the rent in separate payments. The tenant maintained an agreement existed between himself and the landlord where bi-weekly payments were made. The tenant acknowledged paying rent "one or two days late" but said the landlord always accepted the rent and did not take issue with receiving the rent after it was due.

In addition to applications disputing the notices to end tenancy, the tenant applied for a monetary award of \$6,300.00. The tenant said this figure represented costs associated with a hydro bill (\$1,500.00) and a return of rent paid during the course of the tenancy. The tenant argued the landlord had failed to provide him with an adequate rental unit

because of ongoing flood issues. The tenant alleged the basement was unusable, that water, feces and mould were present throughout the basement and he was denied access to approximately 600 sq feet of the 900 sq foot rental unit. The tenant said a sump pump ran consistently throughout the day and night, seven day per week, that this pump was loud, disturbed him and others and significantly added to his hydro bill. The tenant alleged he incurred a cost of \$3.75 per day for the power associated with this pump. Furthermore, the tenant explained he arrived at the figure presented for loss of use related to the rental unit because of the rents being sought by landlords for surrounding rental properties.

The landlord and his agent disputed that any monetary award should be granted to the tenant and argued no evidence was provided by the tenant to support his application. The landlord's agent M.O. said the tenancy agreement entered into by the parties did not provide the tenant with use of the basement area. M.O. stated this area was designated for storage only and the tenant did not lose access to any portion of the rental unit. M.O. explained the sump pump ran for 1.5 months throughout the day and night, seven days per week but disputed the tenant's allegation that the pump ran from January to May 2018. In addition, M.O. disputed the presence of mould or other moisture, arguing the presence of the pump prevented this. The landlord described the pump as "quiet" and disagreed with the tenant's description of the pump.

Analysis

I will begin by analysing the tenant's application to cancel the notices to end tenancy and then turn my attention the tenant's application for a monetary award.

The tenant acknowledged not paying rent for July 2018 but argued the landlord's 10 Day Notice was not signed and stated he had been informed no rent was due as the matter was subject to dispute resolution.

Section 26(1) of the *Act* states, "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." While I find the tenant has failed to pay rent, a review of the 10 Day Notice given to the tenant reveals it to be unsigned. Section 55 of the *Act* notes, "In order to be effective, a notice to end a tenancy must be in writing and must

(a)be signed and dated by the landlord or tenant giving the notice,

(b)give the address of the rental unit,

- (c)state the effective date of the notice,
- (d)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e)when given by a landlord, be in the approved form.

Therefore, while rent may be due and remain unpaid, I find the 10 day notice issued to the tenant is invalid because it was not signed by the landlord. The tenant was successful in cancelling the landlord's 10 Day Notice issued July 8, 2018. This does not preclude the landlord from issuing further notices to end tenancy for unpaid rent.

The second notice before me is a 1 Month Notice to End Tenancy for Cause. The reason cited on the 1 Month Notice is listed as "repeated late payments of rent." The landlord alleged the tenant had been repeatedly late paying rent. The landlord said rent had only been paid in full and on time on three occasions in 2018; listing February, March and May as the months for which rent was paid in full and on time.

Residential Tenancy Policy Guideline #38 examines the issue of repeated late payments of rent in detail. It notes, "a landlord may end a tenancy where the tenant is repeatedly late paying rent...three late payments are the minimum number sufficient to justify a notice under these provisions...it does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments." The tenants argued that the landlord had agreed to accept rent in partial payments because of the nature of his employment but acknowledged that rent was on occasion "one or two days late." The tenant said this had not been an issue and a 10 Day Notice for late unpaid rent was only issued on one occasion.

Policy Guideline #38 provides some further direction on this matter stating, "a landlord who fails to act in a timely manner after the most recent late payment may be determined by an arbitrator to have waived reliance on this provision." In this case, the last late payment of rent was June 2018 after late payments for nearly every month in 2017. Significant evidence was presented by the landlord that rent was consistently and repeatedly paid after it was due in 2017; however, no steps were taken to address this issue until June 2018. I find the landlord has not acted in a timely manner to address these late payments and has waived his ability to rely on section 47(1)(b) of the *Act*.

This tenancy shall continue until it is ended in accordance with the *Act*. This decision does not void rent which remains unpaid and does not prevent the landlord from issuing further notices to end tenancy for any rent that may be outstanding.

I now turn my attention to the tenants' application for a monetary award. The tenants have applied for a monetary award of \$6,300.00.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. 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 of the *Act* 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. In this case, the onus is on the tenants prove their entitlement to a claim for a monetary award.

The tenant argued he had incurred a significant hydro bill as a result of a sump pump that was constantly running, and had suffered a loss due to the ongoing presence of flooding, mould and moisture in the basement area of the home. After having considered the oral testimony of both parties and having reviewed the evidence submitted by the tenants, I find the tenants have failed to present sufficient evidence to prove their entitlement to a claim for a monetary award. *Residential Tenancy Policy Guideline #14* notes, "An arbitrator may award monetary compensation...in situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided." A majority of the evidence provided by the tenants does not relate to their application for a monetary award and fails to provide any context or detail related to their claim. The tenant said he was provided with a figure of \$3.75 per day related to hydro expenses yet no evidence to establish this figure was provided from the hydro company.

In addition to his claim related to the payment of hydro, the tenant said he based the remainder of his application for compensation on rents paid in nearby rental units. No information on rates paid for comparable nearby rental units was provided to the hearing. Furthermore the photos provided as part of his evidentiary package in support of disturbances related to flooding were of poor quality, did not clearly show the alleged damage caused by the flooding and failed to adequately establish the loss of associated square footage. For these reasons I dismiss the tenants' application for a monetary award.

As the tenants were partially successful in his application he may recover the \$100.00 filing fee. In lieu of a monetary award and pursuant to section 72 of the *Act*, the tenants may withhold \$100.00 from a future rent payment on one occasion.

Conclusion

The tenants' application to cancel the landlord's 10 Day Notice to End Tenancy dated July 8, 2018 is successful.

The tenants' application to cancel the landlord's 1 Month Notice to End Tenancy dated July 6, 2018 is successful.

This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may withhold \$100.00 from a future rent payment on one occasion.

The tenants' application for a monetary award 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: September 6, 2018

Residential Tenancy Branch