



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, MNDCT, RP, LRE, LAT, RR, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for compensation for losses or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; 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. Although the landlord's agent (the agent) was authorized to act on the landlord's behalf and after undertaking discussions to attempt to resolve the tenant's dispute, the agent advised that the landlord's authorization did not extend to making binding commitments on the landlord's behalf in the form of entering into a settlement agreement with the tenant or the tenant's advocate.

The tenant and the tenant's advocate (the advocate) confirmed that the tenant was handed a 2 Month Notice for Landlord's Use of Property (the 2 Month Notice) by the landlord on April 4, 2018. The tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the agent confirmed that on or about October 17, 2018, the landlord received a copy of the tenant's dispute resolution hearing package and written evidence package sent by the tenant by registered mail, I find that the landlord was duly served with this package in accordance with section 88 and 89 of the *Act*.

At the hearing, the agent testified that the landlord sent the tenant a copy of the landlord's written evidence, a two page document, by registered mail on or about November 11, 2018. The advocate and the tenant testified that they never received the landlord's written evidence for this hearing. As the agent did not have details to rebut the tenant's claim that written evidence was not served to them for this hearing, I advised the parties that I could not consider the landlord's written evidence as there was insufficient proof that it had been served to the tenant in accordance with section 88 of the *Act*. As the landlord's written submission was fairly brief and would add to an understanding of the landlord's position, I permitted the agent to read into the sworn testimony for this hearing the contents of the landlord's 2 pages of written evidence.

Issues(s) to be Decided

Which of the tenancy agreements apply to this tenancy? What is the correct monthly rent for this tenancy? Are the tenants entitled to a monetary award for losses and monies owing as a result of this tenancy? Should orders be made against the landlord to undertake repairs to the rental unit? Should orders be made to restrict the landlord's right to block the tenant's right to access the rental unit? Should any other orders be made with respect to this tenancy? Should the tenant's rent be reduced? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on or about August 1, 2010. On March 16, 2011, the parties signed a month-to-month Residential Tenancy Agreement (the Agreement), which called for the tenant to pay monthly rent of \$700.00, payable in advance on the first of each month. The landlord continues to hold a \$250.00 security deposit paid by the tenant on March 16, 2011.

When the landlord issued the 2 Month Notice, the monthly rent remained at \$700.00. Although the effective date identified on the 2 Month Notice was May 31, 2018, the

arbitrator who considered the landlord's application for dispute resolution on November 26, 2018 (see reference at beginning of this decision), noted that the corrected effective date for the 2 Month Notice was June 30, 2018. The landlord's application in the previous hearing was for an Order of Possession based on the 2 Month Notice and for a monetary award of \$1,400.00, which according to the decision of the arbitrator who heard this matter on November 26, 2018, was for compensation for unpaid rent owing for September and October 2018.

The previous arbitration decision described the circumstances following the landlord's issuance of the 2 Month Notice in the following terms, which was not disputed at the current hearing:

...The Landlord stated that the Tenant did not pay May 2018 rent and that he paid \$700.00 for June 2018 rent. She advised that he could not vacate the rental unit, so he offered to pay \$1,000.00 to stay in the rental unit. The Landlord felt bad for his situation, so she accepted \$1,000.00 for July 2018 and \$1,000.00 for August 2018.

The Tenant confirmed that he paid \$1,000 for July and August 2018 rent but he stated that the reason he paid this is because the Landlord threatened that he would have to leave if he did not pay that amount. In addition, the Tenant advised that prior to being served the Notice, the Landlord informed him that rent would be raised to \$1,000.00, but when he told her he could not afford that amount, she served the Notice instead...

As outlined below, the previous arbitrator's decision cancelled the 2 Month Notice and dismissed the landlord's application for unpaid rent owing from September and October 2018

... with respect to the Landlord's request for an Order of Possession, the consistent and undisputed evidence before me is that after the tenancy effectively ended on June 30, 2018, the Landlord collected rent in a new amount of \$1,000.00 for July and August 2018. In my view, after the tenancy ended on June 30, 2018, the Landlord engaged in a new, unwritten tenancy with the Tenant as of July 1, 2018. As such, an Order of Possession cannot be awarded to the Landlord as the prior tenancy had effectively ended and the Landlord established a new tenancy with the Tenant.

Moreover, the Landlord requested in her Application for rent owed for September and October 2018. However, as this Application pertained to the previous tenancy, I dismiss this claim as it is not relevant to this hearing...

The tenant entered into written evidence a copy of a subsequent Agreement in which the tenant committed to pay monthly rent of \$1,400.00 per month as of September 1, 2018. The agent provided undisputed sworn testimony that the Agreement that was entered into as of September 1, 2018, was to include an additional area of the tenant's current rental building and was to include access to the laundry room and facilities in this rental building. Both parties agreed that no payments have been made by the tenant to the landlord for September, October or November 2018. The agent said that when the tenant failed to pay rent for September, the landlord did not make any arrangements to provide the tenant with additional area or laundry facilities.

The tenant and the advocate did not deny that rent remains unpaid. The advocate maintained that the last monthly rent that the tenant paid that was undisputed was the \$700.00 that was established by the original Agreement, and which was paid by the tenant until April 2018. The advocate requested that monthly rent be set at \$700.00 for the remaining months of this tenancy, which the advocate said that the tenant would be willing to pay for November and December 2018, and January 2019. The advocate asserted that the tenant was entitled to two month's of compensation for the months of September and October 2018 due to the landlord's failure to use the property for the purpose stated in the 2 Month Notice issued to the tenant. No formal application in this regard was before me.

The tenant and the advocate testified that the tenant is actively seeking alternate accommodations, which the tenant can afford. The advocate and the tenant indicated that the tenant was willing to vacate the rental unit by January 31, 2019, as a means of resolving the issues regarding non-payment of rent and the landlord's expressed desire to have this tenancy ended.

Although the parties discussed a possible settlement of this matter pursuant to section 63 of the *Act*, no settlement was possible as the agent did not believe that they were authorized to make such a settlement on the landlord's behalf. However, the agent reiterated the position outlined in the landlord's written evidence that the agent read into the record of this hearing to advise that the landlord was only interested at this point in time in ending this tenancy and obtaining an order of possession, and to that end, the landlord was not as interested in the amounts outstanding for unpaid rent. The agent did not dispute anything that the advocate said, nor did the agent dispute the proposed monthly rent for the remainder of this tenancy, as long as the tenant agreed to vacate the premises by the end of January 2019.

The advocate also requested the issuance of a series of orders against the landlord to restore the tenant's right to privacy and unobstructed access to the rental suite, free of interference and restrictions that have been imposed by the landlord. The advocate supplied undisputed written evidence supported by sworn testimony that the landlord had blocked the tenant's access point to the tenant's suite by placing large furniture in the tenant's path so as to prevent the tenant from entering the rental unit. The advocate also provided undisputed evidence that the landlord had turned off the tenant's power at one point recently. The advocate requested the issuance of an order requiring the landlord to repair electrical problems in the rental unit and to install a light fixture in a shed which the landlord had built in front of the access point the tenant has for entering this rental unit. The advocate also requested an order preventing the landlord from intercepting and allegedly opening the tenant's mail. The agent did not dispute any of the above requests for the issuance of orders.

Analysis

As was noted at the hearing, I am unable to interfere with, modify or alter the November 26, 2018 decision issued by another arbitrator appointed pursuant to the *Act*. That decision remains final and binding and the legal principle of *res judicata* prevents me from reaching different findings than those already adjudicated by the previous arbitrator with respect to this tenancy.

The principle of *res judicata* has a direct bearing on the tenant's application for a monetary award of \$600.00 for rent which the tenant maintained had been overpaid for the months of July and August 2018. The previous decision referred to above found that rent of \$1,000.00 was paid by the tenant as per a new oral tenancy agreement for July and August 2018. Thus, this part of the tenant's application has already been addressed in the previous decision. I am unable to rule on this aspect of the tenant's application as this matter has already been considered as part of the previous arbitrator's decision. In coming to this conclusion, I also note that the advocate made no mention of this aspect of the tenant's application at the current hearing.

However, for the most part, the issues before the previous arbitrator pertained to the landlord's 2 Month Notice and the landlord's application for a monetary Order for unpaid rent for September and October 2018, which the previous arbitrator found involved a separate tenancy, which had been entered into after the original tenancy had expired.

Section 62 of the *Act* provides me with the following broad powers to resolve disputes arising out of applications for dispute resolution:

- 62** (1) *The director has authority to determine*
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and*
 - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.*
- (2) *The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.*
- (3) *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies...*

I find that the matters raised in this hearing would be best addressed by establishing the monthly rent as of September 1, 2018 at \$700.00. I select this amount of monthly rent because neither of the parties has acted upon the commitments they made in entering into the Agreement that called for expanded living area and facilities to be made available to the tenant as of September 1, 2018 in exchange for the \$1,400.00 the tenant agreed to pay. Had the landlord held up their part of this Agreement and provided the tenant with this expanded living area and additional facilities, the monthly rent would be set at \$1,400.00 as of that date for this new tenancy. Since this did not happen, I find that neither party has lived up to the terms of the Agreement that was to take effect on September 1, 2018. As such, and after hearing undisputed sworn testimony from the advocate, I find that \$700.00 is the correct monthly rent to be applied to this tenancy when the September 1, 2018 Agreement was not implemented by either party.

A request for compensation by the tenant for compensation due to the landlord's failure to use the premises for the stated purpose is not before me, and I will make no order in that regard. However, this matter drew the attention of the previous arbitrator, who wrote as follows:

...As a note, during the hearing, the parties were also advised of the potential compensation requirements of the Notice with respect to whether or not the Landlord used the property for the stated purpose after the effective date of the Notice...

Paragraph 44(1)(f) of the *Act* establishes that one of the ways that a tenancy may end is when an arbitrator appointed pursuant to the *Act* orders that the tenancy is ended.

In this case, and in accordance with the powers delegated to me by sections 62 and 44(1)(f) of the *Act*, I order that this tenancy end by January 31, 2019, a date by which the tenant and the advocate said the tenant was prepared to surrender vacant possession of the rental unit to the landlord. This is also in apparent agreement with the wishes of the landlord to end this tenancy and obtain an order of possession. In so doing, I note that this issue was not initially before me, until the tenant and the advocate advised that the tenant's request for the issuance of orders specific to the ongoing tenancy was of a temporary nature because the tenant was actively seeking alternate accommodation and planned to vacate the rental unit by January 31, 2019.

For the remainder of this tenancy, I issue the following orders, none of which were disputed by the agent:

1. I order that by December 15, 2018, the landlord undertake repairs to the existing electrical system in this rental unit and to install a light in the shed that leads to the tenant's rental unit such that the tenant will have safe access to the entrance to the rental unit.
2. I order the landlord to refrain from turning off utilities servicing the tenant's rental unit.
3. I order the landlord to remove items in the shed that leads to the tenant's rental unit to ensure that the tenant has clear and unobstructed access to the entrance to the tenant's rental unit.
4. I order the landlord to refrain from placing any obstacles in the tenant's way outside the access point to the tenant's rental unit so as to ensure proper and safe access to the rental unit by the tenant.
5. I order the landlord to allow the tenant access to mail sent to the tenant at the rental unit without any interference by the landlord.

As the tenant's application has been partially successful, I allow the tenant to recover the \$100.00 filing fee from the landlord.

Conclusion

I order that the monthly rent as of September 1, 2018 is set at \$700.00, payable in advance by the first of each month.

I allow the tenant to recover the \$100.00 filing fee from the landlord. As rent remains owing to the landlord, I deduct \$100.00 from the amount owed by the tenant to the

landlord for the current month, November 2018. The amount of unpaid rent owing for November 2018 is hereby reduced to \$600.00.

1. I order that by December 15, 2018, the landlord undertake repairs to the existing electrical system in this rental unit and to install a light in the shed that leads to the tenant's rental unit such that the tenant will have safe access to the entrance to the rental unit.
2. I order the landlord to refrain from turning off utilities servicing the tenant's rental unit.
3. I order the landlord to remove items in the shed that leads to the tenant's rental unit to ensure that the tenant has clear and unobstructed access to the entrance to the tenant's rental unit.
4. I order the landlord to refrain from placing any obstacles in the tenant's way outside the access point to the tenant's rental unit so as to ensure proper and safe access to the rental unit by the tenant.
5. I order the landlord to allow the tenant access to mail sent to the tenant at the rental unit without any interference by the landlord.

I order that this tenancy is to end by 1:00 p.m. on January 31, 2018. In the event that the tenant does not surrender vacant possession to the landlord by that time and date and contravenes my order in this regard, the landlord is at liberty to apply for an Order of Possession pursuant to section 55(3) of the *Act*. This does not preclude the landlord from applying to end this tenancy and obtain an Order of Possession for any of the other reasons permitted pursuant to the *Act*.

This final and binding 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: November 29, 2018

Residential Tenancy Branch