



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, ERP, OLC, RR, MNDC, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- 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 emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency 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;
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. After waiting 10 minutes past the start of the scheduled hearing time, the hearing was commenced. The tenants stated that the landlord was served with the notice of hearing package on October 19, 2018 via Canada Post Registered Mail and has submitted a copy of the Canada Post Customer Receipt Tracking number as confirmation. The tenants stated that an online search using the tracking number showed that the landlord had signed in receipt of the package. The tenants also confirmed that an amendment to the application filed November 6, 2018 was served to the landlord via Canada Post Registered Mail on November 6, 2018 which also included the tenants' submitted documentary evidence. I accept the undisputed affirmed evidence that the

landlord was properly served as per sections 88 and 89 with the notice of hearing package, the amendment to the application for dispute and the submitted documentary evidence as claimed.

Preliminary Issue(s)

During the hearing the tenants clarified that the selection(s) made for the following were made in error and as such were cancelled by the tenants:

- 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 emergency repairs to the rental unit pursuant to section 33;
- a monetary order for the cost of emergency 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.

The tenants clarified that the tenants' monetary claim was of compensation for:

\$299.26	Recovery of Extermination Costs, Ants
\$182.40	Recovery of Paid Water Bill
\$5,600.00	Compensation, Loss of Use, Shop space/Shed \$200/month for 28 months

The hearing continued on this basis with the two request(s) to cancel the 10 Day Notice and the 1 Month Notice with the above noted monetary claim.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the tenants entitled to an order cancelling the 1 Month Notice?

Are the tenants entitled to a monetary order for money owed or compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenants provided undisputed affirmed testimony that a verbal tenancy agreement was made for the exclusive use of the 4 ½ acre property, with one exception to allow the landlord access to the fuel tank on the property.

The tenants seek an order cancelling the 10 Day Notice dated October 13, 2018 and the 1 month notice dated October 29, 2018.

The tenants confirmed that they were served with a 10 Day Notice dated October 13, 2018 by posting it to the rental unit door on October 13, 2018. The 10 Day Notice sets out that the tenants failed to pay rent of \$1,800.00 due on October 1, 2018 and that \$194.70 was not paid for utility arrears after a written demand to do so was served to the tenants on July 2, 2018. The 10 Day Notice provides for an effective end of tenancy date of October 23, 2018.

The tenants confirmed that the landlord served the tenants with the 1 Month Notice dated October 29, 2018. The 1 Month Notice sets out an effective end of tenancy date of October 30, 2018 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant has caused extraordinary damage to the unit.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

No details of cause were listed on the 1 month notice.

The tenants also seek a clarified monetary claim of \$6,081.66 which consists of:

\$299.26	Recovery of Extermination Costs, Ants
\$182.40	Recovery of Paid Water Bill
\$5,600.00	Compensation, Loss of Use, \$200/month for 28 months

The tenants claim that extermination costs were incurred to resolve an ant infestation for a cost of \$299.26. The tenants claim that the landlord was notified of the issue and failed to act to resolve it. The tenants claim that the landlord responded by stating, "Its not our problem." The tenants stated that the invoice was provided to the landlord for reimbursement, but was rejected. A copy of the invoice for \$299.25 dated February 7, 2018 for a professional pest control company was submitted.

The tenants seek recovery of \$182.40 for a water bill payment made by the tenants. The tenants claimed that water was included in the tenancy, but that the landlord required the tenants to pay this bill.

The tenants seek compensation of \$5,600.00 for loss of use of a shop/shed area which was promised as part of the tenancy agreement. The tenants stated that at start of the verbal

tenancy agreement, the landlord would give exclusive use of the 4 ½ acre property with the exception of fuel tank access. The tenants stated that the shop/shed area of approximately 1,000 square feet were the denied the use of over the 28 month period. The tenant estimated the loss of use of the space at \$200.00 per month over the 28 month period for \$5,600.00. The tenants stated that the landlord had promised the use of this space, but failed to clear the area for the tenant to make use of it as it is filled with vehicles. The tenant confirmed that this claim for compensation is an arbitrary one and that no actual losses were incurred for the lack of use.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

Section 46 (5) of the Act allows for the tenant who has received a notice under this section to make an application for dispute resolution. In this case, I accept the undisputed affirmed testimony of the tenants that a 10 Day Notice was served by the landlord on October 13, 2018 and that the tenants had applied for dispute on October 17, 2018 within the limitation period. The landlord has not attended in response to this application.

Section 47 (5) of the Act allows for a tenant who has received a notice under this section to make an application for dispute resolution. In this case, I accept the undisputed affirmed testimony of the tenants that a 1 Month Notice was served by the landlord on October 29, 2018. In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

These matters were set for a conference call hearing at 11:00 a.m. on this date. The landlord failed to attend the hearing by way of conference call. I waited until 11 minutes past the start of the scheduled hearing time in order to enable both parties to connect with this teleconference hearing. The hearing was commenced in the absence of the landlord and concluded after 65 minutes with no appearance by the landlord.

Rule 7 of the Rules of Procedure provides that:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from landlord and in the absence of the landlord's participation in this hearing, I order the 10 Day Notice dated October 13, 2018 and the 1 Month Notice dated October 29, 2018 set aside and cancelled. The tenancy shall continue.

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, I accept the undisputed affirmed testimony of the tenants and find that the tenants have established a claim for \$6,081.66 which consists of:

\$299.26	Recovery of Extermination Costs, Ants
\$182.40	Recovery of Paid Water Bill
\$5,600.00	Compensation, Loss of Use, \$200/month for 28 months

The tenants provided undisputed evidence that the rental unit was infested with ants and that emergency costs (pest control extermination costs) were incurred for which the landlord refused to pay. The tenants also provided undisputed evidence that water was included with the tenancy for which the tenants were forced to pay out of pocket the \$182.40. I also accept the tenants undisputed affirmed testimony that the "shop space" was promised as part of the property rental was denied the use of for the 28 month period of the tenancy which the tenant has claimed. I accept the tenants calculation of \$200.00 per month totalling, \$5,600.00. As such, the tenants have provided undisputed evidence and have been successful in proving their claim.

The tenants having been successful are entitled to recovery of their filing fee of \$100.00.

Conclusion

The 10 Day Notice and the 1 Month Notice(s) are set aside. The tenancy shall continue.

The tenants' are granted a monetary order for \$6,181.66.

This order must be served upon the landlord. Should the landlord fail to comply with the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: December 3, 2018

Residential Tenancy Branch