



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR DRI LRE MNDCT OLC PSF OPR MNR MNDCL FFL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- for an early end to this tenancy and an Order of Possession pursuant to section 56;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72 .

The tenants requested:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- an order to the landlord to provide services or facilities required by law 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; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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.

The landlord filed an amendment to his original application on November 18, 2019, changing his application from an application for an early termination of this tenancy to an application for a monetary order and Order of Possession pursuant to a 10 Day Notice to End Tenancy. Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

At the beginning of the hearing both parties confirmed that the landlord had issued 2 10 Day Notices to End Tenancy dated November 2, 2019. The tenant MP was served with a 10 Day Notice dated November 2, 2019, and had moved out. All parties confirmed that MP is no longer a tenant in this dispute.

The landlord also served the tenants PK and PC with a 10 Day Notice dated November 2, 2019. The tenants testified that they had received this 10 Day Notice on November 8, 2019, not November 2, 2019. The effective date on the 10 Day Notice is November 11, 2019. The tenants are still residing there, and are disputing this 10 Day Notice. In accordance with section 88 of the *Act*, I find the tenants PK and PC duly served with the 10 Day Notice on November 8, 2019.

Issue(s) to be Decided

Should the landlord's 10 Day Notices be cancelled? If not is the landlord entitled to an Order of Possession for unpaid rent?

Are the parties entitled to the monetary orders for which they have applied?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Are the tenants entitled to a determination regarding their dispute of an additional rent increase by the landlords?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Are the tenants entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The tenants PK and PC are the two remaining tenants residing at the residential property. The tenant MP moved out, after being served with a 10 Day Notice by the landlord.

This month-to-month tenancy began on March 1, 2013 with different landlords, and PC as the sole named tenant. A copy of the tenancy agreement was provided for this hearing. The monthly rent was set at \$800.00, payable on the first of every month, and a \$400.00 security deposit was paid by the tenant. The tenant PK moved in in May of 2019, and the tenant MP moved in later during this tenancy.

The testimony of the landlord is that he had purchased and took possession of the property as of September 2019, and became the new landlord. The landlord testified that a new tenancy agreement was signed for a month-to-month tenancy to begin on September 1, 2019 with MP as the only tenant. Monthly rent is set at \$1,000.00 as per the agreement, payable on the first of every month. A copy of this tenancy agreement was also provided in evidence. MP testified that PK and PC became sub-tenants, and MP became the main and sole tenant of the landlord. The landlord provided copies of a "Notice of Eviction" dated October 10, 2019 that the MP served on PK and PC. The landlord served PK and PC with a 10 Day Notice to End Tenancy for Unpaid Rent dated November 2, 2019. PK and PC testified that they received the 10 Day Notice on November 8, 2019 and attempted to pay the landlord the monthly rent for November 2019, which was refused.

The tenants PK and PC are seeking the cancellation of the 10 Day Notice for Unpaid rent as they were unable to pay the outstanding rent within the 5 required days. PK and PC are also disputing a rent increase. The tenants testified that the landlord had increased the rent from \$820.00 to \$1,000.00 without serving a proper Notice of Rent

Increase. The landlord does not dispute that a Notice of Rent Increase was never issued to the tenants, but states that the tenants had agreed to the rent increase to \$1,000.00. The landlord testified that the tenants were to pay MP, who was their new landlord as indicated by the new tenancy agreement for September 1, 2019. The tenants are also seeking a monetary order in the amount of \$5,000.00 in compensation for loss of quiet enjoyment, harassment, loss of food in the refrigerator and food, hydro, moving expenses, and the return of their security deposit in the amount of \$400.00. The tenants testified that the landlord had cut off the electricity, and as a result they have no heat, and loss the food in the freezer and refrigerator. The tenants are also requesting an order that the landlord comply with the Act and tenancy agreement, and an order to suspend or set conditions on the landlord's right to enter the rental unit.

The landlord is seeking an Order of Possession for the tenants' failure to pay him rent, as well as a Monetary Order for \$13,100.00 as outlined in the table below and in the landlord's Application:

Item	Amount
Unpaid Rent for November 2019	\$1,000.00
Unpaid Rent for December 2019	1,000.00
Unpaid Rent for January 2020	1,000.00
Compensation for stress & harassment	3,100.00
Loss of income	10,000.00
Total Monetary Order Requested	\$13,100.00

The landlord testified that due to harassment from the tenants he has been unable to operate his blueberry farm. The landlord is seeking \$10,000.00 in lost income due to his inability to operate his farm. The landlord is also seeking a monetary order for unpaid rent for November 2019 through to January 2020, and \$3,100.00 for the stress and harassment he has endured. The landlord dispute the tenants' monetary claims stating that the utilities are to be paid by the tenants, and not him.

Analysis

I find the tenant PC and the previous landlords had entered into a tenancy agreement that began in March of 2013. As the home was sold to this current landlord in 2019, the tenant and new landlord are therefore bound by the same terms under this tenancy agreement and the *Act*. I find that the original tenancy agreement is valid.

Section 44 of the *Act* states how a tenancy may be ended:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

(i.1) section 45.1 [*tenant's notice: family violence or long-term care*];

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(iv) section 48 [*landlord's notice: end of employment*];

(v) section 49 [*landlord's notice: landlord's use of property*];

(vi) section 49.1 [*landlord's notice: tenant ceases to qualify*];

(vii) section 50 [*tenant may end tenancy early*];

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-37.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the

landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Although a new tenancy agreement was signed between the new landlord and MP, I am not satisfied that the landlord had provided sufficient evidence to support that the original tenancy between the landlord and PC was ended in accordance with the *Act* as set out above. Accordingly, I find that a tenancy between the landlord and MP still exists. Furthermore, I find it undisputed by the landlord that no Notices of Rent Increases have been issued to the tenants. I find that the landlord has failed to provide sufficient evidence to support that the tenants have agreed to a rent increase, and accordingly, I accept the tenants' testimony that rent is currently set at \$820.00, and not \$1,000.00. Accordingly, I dismiss the tenants' application disputing a rent increase, and I find that no notices have been issued in accordance with the *Act*.

I find that the landlord has failed to provide sufficient evidence of a sub-lease agreement between MP or PK and MP, who is no longer a tenant.

The testimony of the tenants is that they attempted to pay the landlord the November 2019 rent, but the landlord refused payment.

Section 26 of the *Act* requires that "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. I find that the tenants had attempted to comply with sections 26 and 46 of the *Act* by attempting to pay rent to the landlord, but the landlord had refused to accept the payment. Based on these circumstances I am allowing the tenants' application to cancel the 10 Day Notice dated November 2, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

I accept the testimony of the landlord that the tenants owe rent for the months of November 2019 through to January 2020. Accordingly, I allow the landlord a monetary order in the amount of \$820.00 in unpaid rent for November 2019 through to January 2020, for a total monetary order of \$2,460.00.

Under the *Act*, a party claiming a loss bears the burden of proof. The applicants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, each applicant bears the burden of establishing their claim on the balance of probabilities. They must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the applicants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the applicants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Although the landlord's monetary claim involves parties who he has a tenancy agreement with, section 67 of the *Act* does not allow for monetary claims for losses not directly related to the tenants' contravention of the *Act*. I find that the landlord's monetary claim for lost revenue related to the operation of his blueberry farm does not fall under the jurisdiction of the RTA, and accordingly I decline to render a decision in relation to this matter.

The landlord also filed an application for a monetary order for the stress and harassment by the tenants. I am not satisfied that the landlord has provided sufficient evidence to support his \$3,100.00 claim. I find that a dispute does exist between the parties, but not to the extent where the landlord has demonstrated that he has suffered a loss due to the intentional actions of the tenants. The onus is on the applicant to support how the other party had contravened the *Act*, and furthermore, how this

contravention has caused the party to suffer a loss. On this basis, I dismiss the landlord's monetary claim without leave to reapply.

Similarly the tenants have filed an application for a monetary order in the amount of \$5,000.00. I accept the evidence of the tenants and that they have also suffered much distress arising from incidents that have occurred during this tenancy. The onus is on the tenants, however, to support how the actions of the landlord constitute a contravention of the *Act*, and furthermore, how this contravention has caused the tenants to suffered a loss. I accept the testimony of the landlord that the utilities were the responsible of the tenants, and not the landlord. Furthermore, I find the tenants have failed to support the value of the loss they had suffered due to the landlord's actions. Accordingly, I dismiss the tenants' application for monetary compensation without leave to reapply.

The tenants also filed an application for the return of their security deposit. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. As this tenancy has not yet ended, I find the tenants' application to be premature. This portion of the tenants' application is dismissed with leave to reapply.

As a tenancy exists between the landlord and PC, I order that the landlord fulfil his obligations under the *Act* and this tenancy agreement. I am not satisfied that an order is required to suspend or set conditions on the landlord's right to enter the rental unit, and accordingly this portion of the tenants' application is dismissed without leave to reapply.

As the landlord was partially successful with his application, I allow the landlord to recover half of the filing fee for his application.

Conclusion

As the tenant MP has moved out, the landlord's application related to the 10 Day Notice served on MP is cancelled.

I find that a tenancy exists between the landlord and PC. I order that the landlord comply with the *Act* and his obligations under this tenancy agreement. The landlord's 10 Day Notice date November 2, 2019 is cancelled, and this tenancy is to continue until ended in accordance with the *Act*, regulation, and tenancy agreement.

The tenants' application for the return of their security deposit is dismissed with leave to reapply.

The remainder of the tenants' application is dismissed without leave to reapply.

As I find that I have no jurisdiction to hear the matter about the landlord's loss of revenue related to his blueberry farm, I decline to give a decision about the landlord's monetary claim for compensation related to that matter.

I issue a \$2,510.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent plus half the filing fee for this application.

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this 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: January 21, 2020

Residential Tenancy Branch