



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century Place
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR, MNRT, RR, OLC**
 MNRT, RR, MNDCT, RP

Introduction

This hearing was scheduled to deal with an application filed by the tenant pursuant to the Residential Tenancy Act (“Act”).

The application, filed on January 30, 2020 dealt with the tenant’s application for:

- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- A monetary order for damages or compensation pursuant to section 67; and
- An order for regular repairs pursuant to sections 32 and 62.

During the hearing, the parties sought that the tenant’s second application filed on March 17, 2020 and scheduled to be heard on April 30, 2020 be dealt with during this hearing. In the second application, the tenant sought:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to section 46;
- A monetary order for the cost of emergency repairs to the rental unit pursuant to section 33;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65; and
- An order for the landlord to comply with the Act, Regulations and/or tenancy agreement pursuant to section 62.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of both the tenant’s applications and stated she had no issues with timely service of documents. The tenant acknowledged service of the landlord’s documents.

Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be upheld or cancelled?

Is the tenant entitled to the compensation orders he seeks?

Should the landlord be required to comply with the Act or perform regular repairs as sought?

Background and Evidence

A copy of the tenancy agreement was provided by the landlord. The month to month tenancy began on May 31, 2019. Rent was set at \$1,250.00 payable on the 1st day of each month. A security deposit of \$625.00 was taken by the landlord which she continues to hold. A condition inspection report was conducted at the commencement of the tenancy.

The landlord provided the following testimony. She received a notice to end tenancy from the tenant dated December 30, 2019, provided as evidence. In that letter, the tenant writes, in part,

Mrs. [landlord's name]; all in all I am unable to pay the rent for January 2020 because I don't observe any right to pay and I will be moving by end of January 2020 in to a live able location.

The tenant failed to pay rent on January 1, 2020 in the amount of \$1,250.00. On January 5, 2020, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities stating the tenant failed to pay the said \$1,250.00 on January 1st. The landlord provided signed, witnessed proof of service document indicating she served the tenant by attaching the Notice to the tenant's door at 2:10 p.m. on January 5, 2020. The landlord testified that she was the one who served the Notice. The landlord testified the tenant did not pay the arrears within 5 days of receiving the Notice and has not paid rent for the months of January, February, March or April.

The landlord responded to the tenant's letter saying that because the tenant gave notice, the tenant could have until the end of the month to move out instead of the 15th of the month, as stated in the notice to end tenancy.

On January 27th the tenant wrote a second letter advising that he had an accident on January 18th and '*this has nothing to do with the apartment condition. It happened by itself and prevented me to look efficiently for a new place to live*'. He asks the landlord to 'ignore' January's rent and let him continue living in the rental unit from February on.

The tenant provided the following testimony. He acknowledges he did not pay rent for January, February, March or April. The problem is that he suffers from a shoulder injury that prevents him from working. He also suffers from diabetes, hearing problems, and 'head damage'. He acknowledges each of the letters he sent, but now finds it 'useless' to start looking for another place while he is not able to work. He can't move his shoulder and receives a disability pension. He is not able to pay rent or move.

The tenant testified that in the fall of 2019, he had a verbal conversation with the landlord advising her of 'deficiencies'. The tenant testified the landlord told him it wasn't necessary to put it into writing before she would take care of it and that is why there is no record of it. The only thing the landlord did was to send one guy to put in mouse traps which were useless. The landlord response to this was that the tenant gave her a written letter dated June 29, 2019 advising that:

1. things were stolen
2. he can't use his cell phone properly
3. he has seen mice on 3 different days

A copy of the letter was provided by the landlord.

The landlord testified in response:

1. she has no control over the stolen items
2. she has no control over the cell reception in the building
3. the mouse problem was taken care of by calling a pest control company in on July 9. A copy of the invoice was provided as evidence. The pest controller came back a week later and discovered no dead mice, and that the bait was little eaten.

The tenant complained that he has had no heat in his rental unit. He testified that he gave the landlord notice that the heat is not working and that he would move if it wasn't fixed. No written notices were provided by the tenant. The tenant testified that because there was no heat, he purchased a heater. The tenant also indicated he burned his foot on the heater, however he did not elaborate on this during the hearing. The tenant also testified that he had to take several taxis to the doctor and the hospital but he did not provide any context into how this relates to his claim for compensation.

Lastly, the tenant testified that although he sent the notice to end tenancy and wanted to leave, he had to reconsider the choice because the day he was going to view

alternate rental units was snowy and he could not attend the two appointments he had.

In response, the landlord testified that the tenant never once complained about the heat. If there was a complaint, the landlord goes and deals with it. If the tenant does not know how to work a heater and causes a burn to his own foot, it's not the landlord's fault. She can't be expected to teach the tenant how to use a heater. Lastly, the tenant frequently keeps his balcony door open, causing heat to escape.

The landlord testified that in early March, she served the tenant with his evidence package in response to the tenant's application filed on January 30th. In the evidence package was a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities that was originally served upon the tenant back on January 5th.

Analysis

- application to cancel the notice

I find the tenant was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 8, 2020, three days after it was posted to the tenant's door pursuant to sections 88 and 90 of the *Act*.

The tenant failed to pay the full rent identified as owing within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by January 8, 2020, the earliest date the Notice could be effective. As that has not occurred, I find that the landlord is entitled to an Order of Possession effective 2 days after service. The landlord will be given a formal Order of Possession which must be served on the tenant.

- Tenant's claim for compensation

Section 7 of the *Act* states: 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.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

In his application, the tenant seeks \$2,000.00 for what appears to be a request to stay warm because he has diabetes and other injuries. In his application, the tenant writes the cold temperature caused him to receive shoulder, knee injuries and burnt his right foot ankle, plus paying for taxis to go to the hospital and pay for a new heating system and medicine.

First, I find the tenant's application fails as the tenant has not shown the damage or loss exists. The tenant did not provide sufficient evidence to substantiate his claim for damages. The tenant provided no testimony about any injury to his shoulder or knee caused by the lack of heat. While the tenant's application apparently attributes the cold temperature to causing shoulder and knee injuries as well as a burned ankle, the evidence from the tenant's own letter dated January 27th indicates the accident on January 28th *has nothing to do with the apartment condition. It happened by itself and prevented me to look efficiently for a new place to live.* The tenant provided no testimony regarding burning his ankle on a heater, nor did he provide sufficient proof to substantiate how any of his injuries would be considered damage resulting from any violation of the *Act*, regulations or tenancy agreement. (point 2). Second, if the tenant purchased a heater, he did not provide any documentary evidence to show how much he paid for it. The tenant has not provided evidence of the value of his loss (point 3) for his entire claim for compensation pursuant to section 67. This portion of the tenant's claim is dismissed.

- Rent reduction

Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant. The tenant seeks \$2,000.00 or \$1,250.00 as a reduced rent for service or facilities agreed upon but not provided in the two applications.

The tenant's application dated January 20th is left blank in the dispute description. The application filed on March 17th specifies the tenant wants a rent reduction because the *apartment manager did not manage her responsibilities, her undertaking*.

During the hearing, the tenant did not provide any details or elaborate on this portion of his application. It is unclear to me in what way the manager was not managing her responsibilities and how this would translate into compensation for the tenant.

Rule 7.17 states:

Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence. As the burden to prove the claim falls upon the applicant, I find the evidence to support this portion of the claim was not presented and I find the evidence insufficient. This portion is dismissed.

- Emergency Repairs compensation

Pursuant to section 33(5), A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

"emergency repairs " means repairs that are

- a) urgent,
- b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- c) made for the purpose of repairing
 - i. major leaks in pipes or the roof,
 - ii. damaged or blocked water or sewer pipes or plumbing fixtures,
 - iii. the primary heating system,
 - iv. damaged or defective locks that give access to a rental unit,
 - v. the electrical systems, or
 - vi. in prescribed circumstances, a rental unit or residential property.

The tenant has not provided documentary evidence of written accounts of emergency repairs given to the landlord or receipts to indicate he purchased supplies or hired tradesmen or contractors to perform the emergency repairs. During the hearing, the tenant did not elaborate as to what emergency repairs were made to the rental unit and paid for by him. I find the tenant has provided insufficient evidence to satisfy me

of his entitlement to compensation for emergency repairs and I dismiss this portion of his claim.

- Tenant's application for repairs to be made to the rental unit and for the landlord to comply with the Act

Pursuant to section 62(2) of the *Act*, the director may make any finding of fact or law that is necessary or incidental to making an order. The landlord has been granted an Order of Possession. As such, I find the tenancy is ending and the landlord is not required to make any repairs to the rental unit or to comply with the *Act*. This portion of the tenant's claim is dismissed.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

The remainder of the tenant's application 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: April 06, 2020

Residential Tenancy Branch