



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL, OPC
CNR, OLC, MNDCT, LRE, LAT

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for unpaid rent or utilities; an order that the landlords comply with the *Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; an order limiting or setting conditions on the landlords' right to enter the rental unit; and for an order allowing the tenant to change the locks to the rental unit.

The tenant and both landlords attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the parties indicated that the tenant vacated the rental unit on September 30, 2020. Therefore, I dismiss the tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities, as well as the landlords' applications seeking an Order of Possession. Since the tenant has vacated the rental unit, I also dismiss the tenant's applications for an order limiting or setting conditions on the landlords' right to enter the rental unit and for an order allowing the tenant to change locks to the rental unit.

One of the landlords indicated that he received the tenant's Hearing Package, but not any evidence. The tenant testified that the landlords were individually served by Registered mail on August 24, 2020, which contained all evidence and shows as being received by the landlords on August 26, 2020. The tenant has provided 2 Registered Domestic Customer Receipts stamped by Canada Post on August 24, 2020 as well as 2 Canada Post tracking

print-outs to substantiate that testimony. I am satisfied that the landlords have been served with the Tenant's Application for Dispute Resolution and evidentiary material.

The tenant indicated that he had not received any of the landlords' video evidence, and the landlord advised that he left a USB stick in the tenant's mailbox but did not specify when. The landlord's video evidence was provided to the Residential Tenancy Branch for this hearing on September 3, 11 and 16, 2020. I am not satisfied that the tenant has received all of the evidentiary material, and I decline to consider the video evidence.

No further issues with respect to the exchange of evidence were raised, and all evidence provided has been reviewed and is considered in this Decision, with the exception of the landlord's video evidence.

Issues to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, Regulation or tenancy agreement, and more specifically compensation for loss of quiet enjoyment of the rental unit?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The tenant testified that this fixed term tenancy began on May 31, 2020 and expired on September 30, 2020, at which time the tenant moved out of the rental unit. Rent in the amount of \$850.00 was payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a basement suite and the landlords reside in the upper level of the home. Another basement suite next to the tenant's suite is currently occupied by the landlord's mother-in-law. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that he moved out because the contract expired. The tenancy agreement specifies: "The term of the Lease commences at 12:00 noon on May 31, 2020 and ends at 12:00 noon on September 30, 2020. Tenant must vacate the property at the end of this lease term." The next paragraph states: "In case the Tenants decides not to

stay any longer in this property before the term ends, the Tenants need to give notice in written 1 month prior to that to allow the Landlord to rent that property to other.”

The tenant paid rent for August, 2020, but the landlords have not yet cashed the cheque. It was sent to the landlords by registered mail on August 19, 2020 and the Canada Post tracking system shows that it was delivered to the landlords on August 20, 2020. Proof of such service has also been provided for this hearing. No rent has been paid for September, 2020, and the tenant acknowledges owing \$850.00 for September’s rent.

The tenant was not told prior to moving in that there is no insulation in the basement suite at all, and the tenant lived there from June to the end of September, hearing banging on the ceiling day and night and running water. The tenant’s bedroom was under the landlords’ bathroom and someone stays up all night running water and flushing the toilet. Once the landlord’s mother-in-law moved in next to the tenant’s rental unit, things escalated to the point where the tenant couldn’t live there. The tenant gets home from work at 11:00 at night and the noise goes on till 4:00 or 5:00 a.m. every night. The tenant can hear the landlord’s mother-in-law screaming on the telephone at 3:00 a.m. It was a nightmare.

With respect to the landlord’s claim, the tenant totally disagrees that 2 month’s rent is owed; the tenant cannot force the landlord to cash the cheque that he received. On August 24, 2020 it became clear that the landlord has no intention of cashing it; the tenant received another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a Payment Plan. It was clear that the landlords didn’t want the tenant living there and did everything possible to make his life miserable. Numerous notices to end the tenancy issued by the landlords have been provided as evidence for this hearing.

The tenant claims \$10.00 per day for loss of quiet enjoyment, however the Tenant’s Application for Dispute Resolution specifies a claim of \$1,622.00 and the tenant testified that he seeks \$500.00 per day for aggravated damages.

The first landlord testified that he did not receive a cheque from the tenant. Rent was always paid by cash and the landlord always gave receipts. The landlords seek 2 month’s rent, or \$1,700.00. The rental unit has not been re-rented.

With respect to the tenant’s claim, the landlord testified that the rental unit is in the landlords’ family home. The landlords didn’t do anything extra; just normal family life. If water had been running that much it would affect the landlords’ bill. The landlords didn’t do anything extra when the landlord’s mother-in-law moved in on August 10, 2020 because the landlords knew that the tenant was supposed to move out on September 30, 2020, and

the parties were bound by the contract. Difficulties between the parties started when the tenant didn't pay rent, not when the landlord's mother-in-law moved in.

The tenant has not provided the landlords with a forwarding address in writing.

The second landlord only indicated that she wants the tenant's forwarding address.

At the end of the hearing I authorized the landlords to change the locks to the rental unit.

Analysis

I agree with the tenant that he cannot force the landlord to cash a cheque, and as the tenant suggests, the landlords may have refused to cash a cheque after serving a notice to end the tenancy, or perhaps not. The landlord denies receiving a cheque, however the tenant testified that he sent the cheque for \$850.00 along with a copy of the notice to end the tenancy which the tenant had received from the landlord, by registered mail and provided proof of that. However, the parties agree that the landlords have not yet cashed the cheque, and therefore I find that the landlords are owed \$1,700.00.

The tenant claims damages for loss of quiet enjoyment and testified that from June to the end of September, 2020 he heard banging on the ceiling day and night and running water. He also testified that once the landlord's mother-in-law moved in next to the tenant's rental unit, things escalated to the point where the tenant couldn't live there, that noise went on every night till 4:00 or 5:00 a.m. and that he could hear the landlord's mother-in-law screaming on the telephone at 3:00 a.m.

The landlord testified that things escalated when the tenant didn't pay the rent, not when the landlord's mother-in-law moved into the other basement suite. The landlord also testified that his mother-in-law moved in on August 10, 2020, and the parties agree that the tenancy ended on September 30, 2020. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on August 17, 2020 for rent that was due on August 1, 2020.

I am satisfied that the tenant suffered a loss of quiet enjoyment, but I am not satisfied that the loss occurred from the beginning of the tenancy. I find that the landlords didn't receive the rent on the 1st of August, 2020 so issued the notice to end the tenancy. However, the landlords continued to issue notices to end the tenancy, one of which was a One Month Notice to End Tenancy for Cause on August 30, 2020 claiming repeated late rent, putting

the landlord's property at significant risk, illegal activity and non-compliance with an order. I have heard nothing about illegal activity or any other claim made by the landlord in that Notice. It is clear that the landlords wanted the tenant to move out prior to the end of the fixed term. I find that the tenant has established a claim of \$10.00 per day from August 10, 2020 to September 30, 2020, which totals 51 days, or \$510.00.

The landlords currently hold a security deposit in the amount of \$850.00, which the landlords have not applied to keep. The *Residential Tenancy Act* specifies that a landlord may keep a security deposit if the tenant fails to provide a forwarding address in writing within a year after the tenancy ends. In this case, the tenant has not provided a forwarding address in writing and has not applied for its return, and I make no orders with respect to the security deposit.

Since the tenancy has ended, I dismiss the tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement.

Having found that the landlords are entitled to the unpaid rent in the amount of \$1,700.00, even though the landlords were sent a cheque that they have not cashed, and the tenant is entitled to \$510.00, I set off those amounts and I grant a monetary order in favour of the landlords for the difference totalling \$1,190.00.

Since both parties have been partially successful, I decline to order that either party recover the filing fee from the other party.

Conclusion

For the reasons set out above, the landlords' applications for an Order of Possession are dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end the tenancy for unpaid rent or utilities is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlords comply with the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenant's application for an order limiting or setting conditions on the landlords' right to enter the rental unit is hereby dismissed without leave to reapply.

The tenant's application for an order permitting the tenant to change the locks to the rental unit is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,190.00.

This order is final and binding and may be enforced.

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: October 15, 2020

Residential Tenancy Branch