



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNRT, RP, LRE, LAT, OLC, CNR-MT (tenant);
FL, OPU-DR, OPUM-DR (landlord)**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“Ten Day Notice”) pursuant to section 46;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;
- A request for more time to cancel the Notice to End Tenancy pursuant to section 66;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;

This hearing also dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application pursuant to section 72.

The tenant attended. UH and GH attended for the landlords (“the landlord”). No issues of service were raised.

Preliminary Issue – Adjournment

At the commencement of the hearing, the tenant sought an adjournment. The landlord objected.

Each party was given an opportunity to address the issue. I read aloud the considerations in Rule 7.8 for the granting of an adjournment and asked each party to address the factors in turn.

The tenant provided affirmed testimony as follows. On March 15, 2021, the landlord changed the locks on the unit rented by the tenant without warning. The landlord removed all the tenant’s possessions including the documents the tenant had assembled as evidence in this case; while some of the documents are on the tenant’s phone and computer, he did not have any hard copies. The tenant acknowledged that he was sleeping elsewhere some of the time when the lock-out happened and had removed some belongings. The tenant was subsequently busy helping an elderly couple relocate and has not had the time to reassemble the materials which he believed the landlord took to the dump. The tenant said he needed an adjournment to prove his case and “show that the landlords are lying”. The tenant submitted no evidence in support of the application.

The landlord strenuously denied the tenant’s application for an adjournment. They testified as follows. The lease is a commercial lease and there is no jurisdiction under the Act for this hearing. The leased unit was never occupied by the tenant as a residence; the lease was for the tenant to operate a business and was never used for any other purpose. The landlord provided written warning to the tenant to vacate the unit when the tenant’s checks were returned for rent due on January 1, 2021; no rent was subsequently received. The unit was never used by the tenant for commercial purposes and contained “garbage” only. There was nothing of value in the unit and no copies of correspondence or anything that looked like it related to this case; the landlord put anything left in garbage bags and took it to the dump.

Both parties agreed that there was no possibility of settlement of the dispute. Each accused the other of lying and the landlord said the tenant was “blackmailing” them.

Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* allow parties to request that hearings be adjourned.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party’s request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;
- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

In considering the application, I weighed the credibility of the parties. I considered the two competing versions of what took place. The tenant acknowledged that he still had the computer storing the emails to which he referred as key pieces of evidence. The tenant did not provide a convincing reason for failing to produce even one document for the hearing. Despite the tenant’s assertion that he had many witnesses to call, no one was called by him.

I found the landlord to be the more believable party. The landlord’s testimony was supported by documents. The male and female landlord, spouses, provided a plausible narrative.

As a result of my assessment of the credibility of the parties, I gave greater weight to the landlord’s account; where the evidence of the parties’ conflicts, I prefer the landlord’s version of events. I do not give significant weight to the tenant’s testimony.

Pursuant to Rule 7.11, after considering the testimony and evidence, I refused the tenant’s adjournment request. I determined that an adjournment of this case would not assist the parties in resolving the issues. The need for the adjournment was brought about by the failure of the tenant to prepare for the hearing. The tenant brought the

application on January 19, 2021 and had ample time and a fair opportunity to prepare for the hearing. The responsibility for failure to attend with documents and witnesses rests, in my opinion, entirely with the tenant.

Accordingly, the hearing continued. The hearing in its entirety lasted 81 minutes.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Is the landlord entitled to the relief requested?

Background and Evidence

The parties gave considerable conflicting testimony in the 81-minute hearing. I have considered all relevant evidence and only key admissible facts are referenced.

The parties agreed they entered into a signed tenancy agreement titled "Commercial Lease Agreement" which began on December 1, 2019 for a term ending November 30, 2021. The parties agreed the rent was \$1,155.00 monthly payable on the first of the month.

A copy of the signed agreement was submitted. The leased premises are described and section 3 as "the commercial premises municipally described as [municipal address]". There is no reference to the unit being a residential unit. Each page has a header with the page number and the words "Commercial Lease Agreement". Section 12 states as follows:

The Tenant will carry on business under the name of B[...] Trailer Company

The tenant testified as follows. With the knowledge and consent of the landlord, the tenant started living in the unit several months after the tenancy started. There were appliances for cooking in the unit. At about the same time, the landlord offered to pay the tenant for doing errands and various tasks in the building. However, the landlord reneged on their obligation to pay and only ever paid the tenant \$150.00. A sum of \$7,000.00 is owing the tenant for his work. Relations between the parties soured and the tenant acknowledged he did not pay rent for the month of February 2021.

The landlord denied the tenant's version of events. They said the sole purpose of the lease was so that the tenant could open a business. The landlord stated the tenant's

plans never got it off the ground. They asserted they never promised the tenant money for work, except for the \$150.00 they paid for a job. They denied that the tenant ever lived in the unit. They said that residential use of the unit may void their insurance and they would never have agreed to such an arrangement.

The parties agreed that the landlord changed the locks to the unit on March 15, 2021 as the tenant had no paid rent for January or February 2021 and had ignored a written demand to pay or vacate. The landlord stated the unit contained only “garbage” as stated earlier.

Analysis

As stated earlier, in considering the testimony and evidence of the parties, I prefer the landlord’s version of events as adequately supported by documentary evidence.

As stated in *Residential Tenancy Policy Guideline 14*, the Act does not apply to a commercial tenancy.

I find this lease is a commercial tenancy. I do not find the testimony of the tenant credible that there was a lease for a residential unit or that the landlord ever agreed the tenant could live in the unit.

Accordingly, I decline to hear this matter as I do not have jurisdiction to do so. The matter, including the landlord’s application, is dismissed without leave to reapply.

Conclusion

The tenant’s and landlord’s application are dismissed without leave to reapply for lack of jurisdiction. 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 15, 2021

Residential Tenancy Branch