



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, RR, RP, PSF, LAT, LRE, OLC

Introduction

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70.

MB ("landlord") represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application. The landlord testified that they did not receive any written evidence from the tenant other than the eviction notice. The landlord did not submit any

written evidence for this hearing. Both parties confirmed that they were ok with proceeding as scheduled to deal with the tenant's applications.

Preliminary Issue: Notice to End Tenancy

Both parties confirmed that the landlord had served the tenant with a handwritten notice on January 29, 2021 for the tenant to vacate the property by 12:00 p.m. on March 1, 2021. The tenant filed an application to cancel this Notice.

Section 52 of the *Act* provides the following requirements requiring the form and content of notices to end tenancy:

52 *In order to be effective, a notice to end a tenancy must be in writing and must*

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form...

The 1 Month Notice to End Tenancy provided to tenant by the landlord on March 1, 2021 does not comply with Section 52 of the *Act* as it is not in the approved form. Accordingly, the 1 Month Notice has no legal effect. The tenancy will continue until ended in accordance with the *Act*.

Preliminary Matter: Does the Residential Tenancy Branch have jurisdiction to hear the dispute between the parties?

The landlord's agent testified that the landlord was residing in the home prior to the beginning of this tenancy, and shared the kitchen and bathroom with the tenant during this tenancy. The landlord's agent argued that the *Act* does not apply this matter.

The tenant disputes that the landlord had ever resided in the home, and testified that the landlord lives next door.

Preliminary Issue: Analysis

Section 4(c) of the *Act* reads in part as follows:

- 4 *This Act does not apply to...*
 (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,...

The testimony of the landlord's agent was that the landlord had shared common areas with the tenant, including the kitchen and bathroom. The tenant's testimony is that the landlord actually lives next door.

In consideration of the testimony and evidence before me, I am not satisfied that the landlord had provided sufficient evidence to support that the landlord had resided in the home, and had shared the kitchen or bathroom facilities with the tenant. I find that the *Act* does apply to this matter, and will consider the tenant's applications as set out below.

Issues

Is the tenant entitled an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to change the locks to the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to a monetary compensation for money owed under 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 the tenant's applications and my findings around it are set out below.

This month-to-month tenancy began on September 15, 2020, with monthly rent current set at \$600.00, payable on the first of the month. No security deposit was collected for this tenancy.

The tenant filed their application in relation to several outstanding issues.

The tenant testified that she now has a bedroom door, but the landlord had changed the locks, and did not provide the tenant with a key. The landlord's agent testified in the hearing that they were unaware that the tenant was not provided with a key, and agreed in the hearing to provide the tenant with a key immediately.

The tenant testified that her wifi has not worked since April 2021. The landlord's agent testified in the hearing that the wifi was working properly, and no other tenants have had any issues.

The tenant testified that she also had no heat since April 2021. The tenant testified she had to purchase a heater. The tenant is requesting that the landlord restore this facility along with the other facility and services, and reimburse the tenant \$150.00 for the heater, and provide the tenant with a refund in rent in the amount of \$750.00. The landlord responded that the heating is provided through baseboard heating, and was controlled by the thermostat. The landlord denies turning off the tenant's heat, and testified that the tenant has not notified the landlord of any issues. The landlord responded that the tenant has not supported the losses claimed.

The tenant testified that the landlord was unprofessional and would harass her by knocking on the tenant's window. The landlord's agent disputes this allegation, and states that they were not aware of this incident or other incidents of this nature.

Analysis

As the landlord's agent agreed to provide the tenant with a key, I order that the landlord comply with this agreement by providing the tenant with a key if the landlord has not

done so already. As this matter was addressed, I dismiss the tenant's application in relation to the provision of keys and the changing of locks with leave to reapply.

I find that the tenant's bedroom door has been replaced, and accordingly, I decline to make any further orders in relation to this matter.

The landlord disputes the tenant's claims that the landlord had failed to provide services and facilities as set out in the *Act* and tenancy agreement. The landlord also denies the allegations of harassment by the landlord. In light of a disputed claim, the onus is on the applicant to support their claim. I am not satisfied that the landlord had contravened the *Act* or tenancy agreement for this tenancy, and accordingly, I dismiss the tenant's applications for the orders requested with leave to reapply.

In consideration of the tenant's monetary applications, under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant 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, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant 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 tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Furthermore, section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that the services and facilities listed in the tenant’s applications were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. In light of the disputed facts, I am not satisfied that the landlord had denied the tenant’s access to wifi, heat, or other services or facilities. I am also not satisfied that the evidence supports that the landlord has harassed the tenant. On preponderance of all evidence and balance of probabilities I find the tenant has failed to provide sufficient evidence to support their claims for a rent reduction and monetary order. I dismiss these portions of the tenant’s application without leave to reapply.

Conclusion

The 1 Month Notice to End Tenancy provided to tenant by the landlord on March 1, 2021 does not comply with Section 52 of the *Act* as it is not in the approved form. Accordingly, the 1 Month Notice has no legal effect. The tenancy will continue until ended in accordance with the *Act*.

The landlord agreed in the hearing agreed to provide the tenant with keys to the new locks. I order that the landlord comply with this agreement if the landlord had not already done so.

The tenant’s monetary claims and application for a rent reduction are dismissed without leave to reapply.

The remaining portions of the tenant’s applications are dismissed with 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: June 11, 2021