Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT MNRT FFT

Introduction

The tenant seeks compensation under the *Residential Tenancy Act* ("Act").

Attending the hearing was the corporate tenant's agent and the landlord. The tenant's agent's name was listed in the application for dispute resolution, but the tenancy agreement lists an incorporated company as the tenant. As such, the style of cause on the cover page of this decision has been amended to reflect the correct name of the tenant.

The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. It should be noted that the landlord served the tenant with a package of documentary evidence on April 13, 2022. Canada Post's tracking website indicates that the package was available for pickup by the tenant on April 14, 2022. The package appears to have yet been picked up by the tenant, but it is my finding that the landlord served her evidence in compliance with the Residential Tenancy Branch's *Rules of Procedure.*

Issue

Is the tenant entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy began on September 15, 2019. The nature of the tenancy was not typical, in that there was no physical rental unit (such as a house or an apartment) being rented.

What was being rented by the landlord was a plot of land, an area on the landlord's field, on which the tenant could park his RV and a few extra vehicles. The RV was hooked up to the landlord's electrical grid and water. Every month the RV would have its septic tank emptied. In essence, then, the tenancy is akin to that of a manufactured home park site. However, as the tenant brought this application under the *Residential Tenancy Act,* and not the *Manufactured Home Park Tenancy Act,* and as the landlord did not raise any issue with the applicable statute, this decision is made on the basis that the *Residential Tenancy Act* applies. (I say all of this because there are differences between the two statutes in respect of compensation and what may be claimed.)

Monthly rent was $300.00, and this was due on the fifteenth of the month. No pet damage or security deposit was paid, and the tenancy was a month-to-month type of tenancy. A one-page tenancy agreement was submitted into evidence by both parties. It is not the typical tenancy agreement used by most landlords and tenants, though it did contain some of the common terms found in such agreement. What it notably contained was also a term *not* found in such tenancy agreement: a term which permitted either party to end the tenancy with 30 days' notice with no cause. I will return to this term later, as it is relevant to this dispute.

The tenant experienced various electrical issues with being hooked up, and he hired an electrician to upgrade an outlet in the landlord's piano studio, in a converted garage. This cost him $380.00, and he did this "as a favour to the landlord." He did not retain the receipt for this work. While he did have this work done as a favour, he argued that considering everything that happened it is now only fair to be compensated.

The tenant also seeks compensation equivalent to twelve months' rent in the amount of $3,600.00. It is his understanding that the Act permits a twelve months' rent amount to be awarded where a landlord has wrongfully evicted a tenant, and even more so during the COVID-19 eviction embargo that was in place at the time. The tenant argued that there was a wrongful disconnection of the electrical (and possibly water, though he did not specifically mention this) on September 3, 2021, and that the eviction notices were illegal. Shortly after the disconnection, the tenant "needed to get out of Dodge" and left the property.

The landlord denied ever disconnecting the power and explained that the electrical power systems were never in good shape. She noted that the main house was built in 1947 and had an old electrical system. Upgrades to the system would have cost upwards of $2,000.00. As for the $380.00 upgrade, the landlord had no idea about this.

While the parties “made do” over the winter of 2020-2021, the electrical issues continued. This was one of the reasons why, on March 20, 2020, the landlord gave the tenant notice to terminate the tenancy. On August 17, 2020, with the tenancy still ongoing, the breaker went off and the tenant had apparently walked into the landlord’s house to reset the breaker. The police were called and told the tenant to stay away from the landlord’s house. “We were not friends at that point in time,” the landlord remarked.

Another “FINAL NOTICE” notice to end the tenancy was dated September 16, 2020. According to the landlord, she had to endure verbal abuse from the tenant after this second notice was given.

In rebuttal, the tenant took issue with the landlord’s testimony about her unilateral decision to simply leave the electricity turned off. The tenant then described a large Frenchman who had come upon the scene (apparently the landlord’s new boyfriend) and who yelled at the tenant over the fence. In any event, the tenant reiterated that the landlord had cut off the electricity in contravention of the tenancy agreement.

The landlord’s rebuttal was brief, though she noted that the tenant vacated the property on August 31.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. And section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement.

In respect of the tenant’s claim for $380.00 in compensation for an electrical upgrade, it appears that he went about having this done on his own accord and “as a favour” to the landlord. There is no evidence before me that the landlord breached either the Act or the tenancy agreement by which she now must pay damages to the tenant. Nor, I find, is the tenant now entitled to seek compensation for work that he clearly did on his own. For these reasons, I am unable to find that the tenant is entitled to this claim.

In respect of the tenant's claim for compensation equivalent to twelve months' compensation, the only type of claim for this specific amount is one made under subsection 51(2) of the Act. This type of claim may only be considered where a tenant has received a notice to end tenancy under section 49 (landlord's use of property) of the Act. In almost all cases this occurs when a landlord issues a *Two Month Notice to End Tenancy for Landlord's Use of Property.* Otherwise, the Act does not contain any other provision by which a tenant is entitled to receive compensation specifically equivalent to twelve months of rent. The landlord never issued any such notice.

Turning back to the term in the tenancy agreement which allowed either party to unilaterally terminate the tenancy without cause within thirty days, such a term is prohibited under the Act. A landlord or tenant may only end a tenancy in a manner that complies with section 44 of the Act. There is no method under the Act by which one party may unilaterally end a tenancy without cause.

By operation of section 5 of the Act, this 30-day-without-cause term in the tenancy agreement was of absolutely no legal effect. By extension, any notice to end the tenancy under the no cause term would similarly be of no legal effect. What this means is that the tenant could, in fact, have simply ignored the two eviction notices given to him by the landlord. This was not so much as an "illegal eviction" as the tenant has argued, but rather, no eviction. Neither notice to end tenancy were of any legal effect and neither could have been enforceable under the Act.

For these reasons, the tenant has not proven a breach of the Act by which he is entitled to $3,600.00. This aspect of his application is therefore dismissed.

Regarding the apparent shut off power, the tenant says that the landlord shut off the power. The landlord says she did not. When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the tenant has failed to provide any evidence that the landlord deliberately shut off the power.

As the tenant was not successful in this application his claim to recover the cost of the application filing fee (under section 72 of the Act) must be dismissed.

Conclusion

The application is dismissed, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 28, 2022

Residential Tenancy Branch