



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL OLC PSF FFT

Introduction

The hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 8, 2022 ("2 Month Notice") pursuant to sections 49 and 55;
- an order for the Landlord to comply with the Act, the *Residential Tenancy Regulations* (the "Regulations") and/or tenancy agreement pursuant to section 62;
- an order the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 65; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 72(1).

The Landlord did not attend this hearing. I left the teleconference hearing connection open while the phone system was monitored for the entire hearing to enable the Landlord to call into this teleconference hearing which scheduled for 11:00 am. The Tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference until the hearing ended at 11:37 am.

The Tenant stated he served the NDRP and some of his evidence (collectively the "NDRP Package") on the Landlord by email on April 29, 2022. The Tenant stated that, pursuant to an order of an arbitrator, made in an earlier dispute resolution proceeding, the Landlord and Tenant were authorized to serve each other by email. Based on the undisputed testimony of the Tenant, I find the Landlord was served with the NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

The Tenant stated he served additional evidence on the Landlord on August 4, 2022. Based on the undisputed testimony of the Tenant, I find the Landlord was served with the Tenant's additional evidence in accordance with the provisions of section 88 of the Act.

The Tenant stated he did not receive any evidence from the Landlord for this proceeding.

Preliminary Matter – Landlord's Non-Attendance

The Landlord did not attend the hearing. Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, even though the Tenant made the Application, the Landlord bears the evidentiary burden to prove that the 2 Month Notice was issued for valid reason. As the Landlord failed to attend the hearing, I find that the Landlord has failed to discharge this evidentiary burden. Accordingly, I cannot find that the 2 Month Notice is valid. As such, I order the 2 Month Notice to be cancelled. The tenancy will continue until ended in accordance with the Act.

Issues to be Decided

Is the Tenant entitled to:

- an order for the Landlord to comply with the Act, Regulations and/or tenancy agreement?

- an order for the Landlord to provide services or facilities required by the tenancy agreement or by law?
- recovery of the filing fee for the Application from the Landlord?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Tenant submitted into evidence a copy of the tenancy agreement dated January 8, 2022 ("Tenancy Agreement") between the Tenant and Landlord. The Tenant stated the tenancy commenced on January 8, 2022, on a month-to-month basis, with rent of \$1,275.00 payable on the 8th day of each month. The Tenant stated he paid a security deposit of \$600.00 to the Landlord. The Tenant testified the Tenancy Agreement provides that the rent includes Wi-Fi and use of the laundry facilities by the Tenant only.

The Tenant stated the Landlord disconnected the Wi-Fi service during February 2022. The Tenant stated the Landlord changed the lock for access to the laundry room in February 2022. The Tenant stated he is currently doing his laundry in the bathtub in the rental unit.

Analysis

The Tenancy Agreement provides the Tenant will be provided with Wi-Fi service and access to laundry facilities. The undisputed testimony of the Tenant was the Landlord has disconnect the Wi-Fi service and changed the lock to the laundry room in February 2022. Section 27 of the Act states:

- 27(1) A landlord must not terminate or restrict a service or facility if
- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
 - (b) providing the service or facility is a material term of the tenancy agreement.

Based on the undisputed testimony of the Tenant, I find the Landlord has terminated the Wi-Fi service and the Tenant's access to the laundry facilities. As such I find the Landlord is in breach of the Tenancy Agreement. Based on the foregoing, pursuant to

section 52(3) of the Act, I order the Landlord to immediately reinstate and provide the Tenant with access to Wi-Fi services and immediately provide the Tenant with a key for access to the laundry room and use of the laundry facilities.

The Tenant has been successful in the Application. As such, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

Conclusion

The 2 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

I order the Landlord to immediately:

1. reinstate and provide the Tenant with access to Wi-Fi services; and
2. provide the Tenant with a key for access to the laundry room and use of the laundry facilities.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his

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: August 20, 2022

Residential Tenancy Branch