



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNETC, FFT

Preliminary matters

The landlord requested a correction to the spelling of his first name. The tenant agreed to allow the change.

Introduction

This hearing dealt with an application by the tenant for a monetary order for compensation for loss under the *Act* and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The landlords acknowledged receipt of evidence submitted by the tenant and stated that they had not served a copy of their evidence on the tenant. Accordingly, the landlord's evidence was not used in the making of this decision.

Issue(s) to be Decided

Is the tenant entitled to compensation and to the return of the filing fee?

Background and Evidence

The tenancy started in December 2019. In June of 2020, the property changed hands and the tenancy continued. The monthly rent was \$900.00 due on the first of each month. The tenants are siblings (AG and HG) and rented the unit as room mates.

On June 30, 2022, the landlord gave the tenant verbal notice to move out. In the tenant's evidence, copies of text messages between the parties indicate that the tenant asked the landlord multiple times for a written notice and the landlord refused.

The landlord stated that on June 30, 2022, she informed the tenants verbally that she had applied for a permit to demolish the house and that she had received the permit and had scheduled a date for demolition. The landlord requested the tenants to move out of the rental unit by the end of July 2022.

The tenant AG testified that on July 22, 2023, when she returned from work after a graveyard shift, HG informed her that the water supply was shut off and therefore HG. was unable to attend work that day. The tenants contacted the landlord who instructed them to go to a motel at her cost. However, when the tenants informed her of the cost, she told them that she would not be paying. She advised them to stay with friends and offered to cover the cost of storage of their belongings.

AG testified that she was forced to visit a fast-food place to use the facilities. Both tenants were unsuccessful in finding alternative rental accommodation for the remainder of the month.

The landlord promised both tenants accommodation at her other rental properties. The female tenant AG visited the property which was occupied at the time. She found out later that the occupants would be moving out at the end of August. The landlord promised her that she could rent the unit at \$1,500.00 per month starting September 01, 2023, and asked AG to stay with a friend till then.

The landlord promised HG accommodation at one of her rental properties at a rent of \$1,000.00 per month but failed to follow up on it. HG was forced to live in his car. AG stated that due to the lack of stable accommodation, both tenants were forced to miss four days of work. AG stated that she earns an hourly wage of \$26.50 and works for 8 hours per day. By missing four days of work, she suffered a loss of income in the amount of \$848.00. AG added that her brother HG earns an hourly wage of \$21.00 pr hour and works a 10-hour shift per day. HG suffered a loss of income in the amount of \$840.00.

The landlord agreed that she had accepted rent for the full month of July which included a payment of rent for half a month plus the damage deposit. The tenant agreed that the landlord paid the storage fees for the first month but refused to pay after that. The landlord also informed me that she had loaned her truck to the tenants to move their belongings to storage and it was damaged in the process.

The tenant stated that the rental home was demolished and as of the date of this hearing there is a brand-new home at the location of the rental unit.

The tenant has applied for compensation as follows:

| | | |
|----|--|------------|
| 1. | Rent for August 2023 for HG | \$1,000.00 |
| 2. | Rent and security deposit for August 2023 for AG | \$3,325.00 |
| 3. | UHaul moving truck | \$92.64 |
| 4. | UHaul moving supplies | \$67.20 |
| 5. | Loss of income | \$1,704.00 |
| | Total | \$6,188.84 |

Analysis

Section 52 of the *Residential Tenancy Act* addresses how to provide notice to end a tenancy.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing (my emphasis) 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,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In this case the landlord gave the tenant verbal notice and despite the tenants' requests for a written notice, the landlord did not comply. Based on the testimony of the landlord, I find that the landlord had plans to demolish the rental unit and had applied for a permit. In this case the landlord should have served the tenant with a section 49 two month notice to end tenancy for landlord's use of property, but failed to do so.

Sections 49 (6)(a) and 49(7) of the *Residential Tenancy Act* state

6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a)demolish the rental unit;

(7)A notice under this section must comply with section 52 [*form and content of notice to end tenancy*]

A tenant who receives a notice to end tenancy under section 49 is entitled to compensation as specified in section 51 of the *Residential Tenancy Act*

Tenant's compensation: section 49 notice

51 (1)A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case the landlord admitted that the purpose for ending the tenancy was to demolish the rental unit but did not serve the tenant with a s.49 two month notice to end tenancy for landlord's use of property. The landlord verbally informed the tenant on June 30, 2022, that the tenancy would end by July 31, 2022. On July 22, 2022, the water supply to the rental unit was cut off and the tenants were left homeless as the rental unit was uninhabitable.

Under section 27 of the *Residential Tenancy Act* a landlord must not terminate or restrict a service or facility if:

- the service or facility is essential to the tenant's use of the rental unit as living accommodation, or;
- providing the service or facility is a material term of the tenancy agreement.

An “essential” service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation, the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation.

In this case, by shutting off the water supply to the rental unit, the unit was rendered unfit for occupation.

Based on the testimony of both parties, I find that the landlord’s actions to issue a verbal notice to end tenancy and to cut off the water supply caused the tenants hardship, inconvenience, and a loss of income.

Since the landlord cut off the water supply on July 22, 2022, I award the tenant the return of rent paid for July in the amount of \$900.00. I further find that the tenants are entitled to rent for August but not the to the security deposit paid to secure the rental unit for August 2022. The tenant’s claim for moving costs is reasonable and supported in evidence. Based on the tenant’s testimony of a loss of income for 4 days, I find that tenant HG is entitled to \$840.00 and tenant AG is entitled to \$848.00 for a total of \$1,788.00.

Based on my findings, the tenant has established the following claim:

| | | |
|----|--|------------|
| 1. | Return of rent paid for July 2022 | \$900.00 |
| 2. | Rent for August 2023 for HG | \$1,000.00 |
| 3. | Rent and security deposit for August 2023 for AG | \$1,550.00 |
| 4. | UHaul moving truck | \$92.64 |
| 5. | UHaul moving supplies | \$67.20 |
| 6. | Loss of income | \$1,788.00 |
| 7. | Filing fee | \$100.00 |
| | Total | \$5,497.84 |

Overall, the tenant has established a claim of \$5,477.84. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 11, 2023

Residential Tenancy Branch