



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNR, MNDC, OLC, FF

Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice To End Tenancy for Unpaid Rent; for a monetary Order for compensation for damage or loss; for an Order requiring the Landlord to comply with the Residential Tenancy Act (Act), and to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy that was served by the Landlord should be set aside; whether the Tenant is entitled to compensation for food she consumed while living away from her rental unit; whether there is a need for an Order requiring the Landlord to comply with the Act; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of filing this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 15, 2008; that it was a fixed term tenancy that ended on March 31, 2009; and that the Tenant was required to pay monthly rent of \$950.00.

The Landlord and the Tenant agree that there was a flood in the rental unit on July 28, 2009 that rendered the rental unit unsuitable to occupy. The parties agreed that the Tenant was able to return to the rental unit on October 04, 2009. The parties agree that the Landlord provided the Tenant with furnished accommodations in another location for the period of her displacement.

The Landlord and the Tenant agreed that the Tenant was not required to pay rent for August and September of 2009. The parties agreed that the Tenant was only required to pay pro-rated rent of \$857.92 for the month of October of 2009, as she did not return to the rental unit until October 04, 2009. The Tenant stated that she did not initially pay the rent for October because she believed she should be compensated for the cost of her food during the period of her displacement.

The Landlord and the Tenant agreed that the Agent for the Landlord personally served the Tenant with a Notice to End Tenancy for Unpaid Rent on October 05, 2009 and that the Tenant paid the pro-rated rent for October on October 07, 2009.

The Landlord and the Tenant agreed that the accommodation that was provided to the Tenant was being sold and that there was an open house at the premises every day. The Tenant stated that because she was required to keep the house very clean, as a result of the open houses, and because she had limited cooking utensils she felt compelled to eat in restaurants more frequently and to use "convenience" foods when she elected to eat at home. She contends that she spent more on food while she was living in these accommodations and she is seeking compensation, in the amount of \$488.88, for these additional expenses.

The Tenant requested an Order requiring the Landlord to comply with the Act whenever he wishes to access the rental unit. The Landlord stated that he believes he has always complied with the Act when accessing the rental unit and that he has no difficulty complying with the Act in this regard. The Landlord acknowledged that he did enter the rental unit on one occasion without written notice or authorization from the Tenant but he stated that he needed to access the rental unit for the purposes of repairing the heat in another portion of the residential complex.

The Landlord and the Tenant agree that the Landlord has previously agreed that the Tenant can have a roommate. The Landlord stated that the Tenant has now had three roommates and he now wishes to revoke her right to have a roommate. He contends that the parties entered into a new tenancy agreement when their fixed term tenancy reverted to a month-to-month tenancy on March 30, 2009 and that he had the right to change the terms of the tenancy agreement to restrict the number of people who can occupy the rental unit, which he believed was an emergency.

The Landlord and the Tenant agree that the Tenant has emailed the Landlord, on several occasions, regarding her concern about noise emanating from the upstairs rental unit. The Landlord stated that he has taken action on each occasion and he believes that the problems have been resolved. The Tenant stated that she is not

certain that the problems have been resolved and she simply wants some assurances that the Landlord will address the problems if they continue.

Analysis

The evidence shows that the Tenant was required to pay pro-rated rent for October of 2009, in the amount of \$857.92; that the Tenant had not paid that amount by October 05, 2009; that the Landlord served the Tenant with a Notice to End Tenancy for Unpaid Rent on October 05, 2009; and that the Tenant paid the pro-rated rent on October 07, 2009.

Section 46(4)(a) of the *Act* stipulates that a Notice to End Tenancy for Unpaid Rent has no effect if a Tenant pays the outstanding rent within five days of receiving the Notice to End Tenancy for Unpaid Rent. As the Tenant paid the rent within five days of receiving the Notice to End Tenancy, I find that the Notice is of no force and effect. As the Notice is of no force and effect, there is no need for me to set aside this Notice. As the Notice is of no force and effect, this tenancy will continue until it is ended in accordance with the *Act*.

I accept the Tenant's testimony that she incurred extra food costs as a result of her temporary displacement, in the amount of \$488.88. I find, however, that these extra expenses were offset by the fact that she was not required to pay rent for August and September while she was living in the temporary accommodations provided by the Landlord, which represents a saving of \$1,900.00. I find that the savings of \$1,900.00 greatly outweighs the \$488.88 in extra expenses that the Tenant incurred during this period of displacement and therefore I deny her claim for compensation for \$488.88.

To avoid further conflict between the Landlord and the Tenant I hereby remind the Landlord of his obligation to comply with the *Act* whenever he needs to access the rental unit. For the benefit of both parties, section 29 of the *Act*, reads:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

*(f) **an emergency exists and the entry is necessary to protect life or property.***

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)(b).

[Emphasis added]

I find that the Landlord and the Tenant entered into a fixed term tenancy agreement on April 15, 2008 that ended on March 31, 2009. As the tenancy continued after March 31, 2009 and there is no evidence that the parties signed a new tenancy agreement, I find that this tenancy reverted to a month to month tenancy agreement on that date with the same terms and conditions of the original agreement. I find that there was nothing in the original tenancy agreement that restricted the Tenant's ability to have a roommate and that the Landlord had consented to the Tenant having a roommate. Section 14(2) of the *Act* stipulates that a term of a tenancy agreement may only be changed if the Landlord and the Tenant agree to the amendment. In these circumstances, I find that the Tenant did not agree to amend the terms of the tenancy agreement in regards to having a roommate and I therefore find that the Landlord does not have the right to amend this term of their tenancy agreement. On this basis, I find that the Tenant retains the right to have a roommate.

To ensure that the Landlord and the Tenant communicate effectively in regards to future problems with noise emanating from the upper rental unit, I hereby Order the Tenant to report all of her concerns regarding the upper rental unit to the Landlord, in writing, in a timely manner. I also Order the Landlord to respond to the Tenant, in writing, whenever he receives a written complaint about noise in the upper rental unit. In his written response, the Landlord is hereby ordered to advise the Tenant of any actions he has taken to resolve her concerns.

Conclusion

I find that the Tenant did not need to apply to set aside the Notice to End Tenancy and that her claim for financial compensation was without merit. I find that her request for an Order requiring the Landlord to comply with the *Act* has some merit. On this basis, I find that the Tenant is entitled to recover half of the \$50.00 fee that she paid for filing fee this Application for Dispute Resolution. On this basis, I hereby authorize the tenant to

reduce her next monthly rent payment by \$25.00, as compensation for a portion of the filing fee she paid.

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: November 18, 2009.

Dispute Resolution Officer