



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, MNDC, OLC, LRE, LAT, and RR

Introduction

This hearing was convened 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 or Utilities; for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; for an Order authorizing the Tenant to change the locks; and for authorization to reduce the rent for repairs, services, or facilities agreed upon but not provided.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Tenant stated that he sent the Application for Dispute Resolution, the Notice of Hearing, and copies of the evidence he submitted to the Residential Tenancy Branch to the Landlord, via registered mail, on February 10, 2011. The General Manager acknowledged receipt of that evidence on February 11, 2011.

The General Manager stated that the Landlord submitted a package of evidence to the Residential Tenancy Branch on February 11, 2011. The Building Manager and the Maintenance Worker stated that they placed a copy of this evidence package under the Tenant's door on February 15, 2011. The Tenant denied receiving this evidence package.

As the Landlord's evidence package was not served in accordance with section 88 of the *Act* and the Tenant did not acknowledge receipt of this evidence, the evidence submitted by the Landlord has been excluded and was not considered when determining the merits of this matter.

The General Manager stated that the Landlord did not have sufficient time to respond to the Tenant's Application for Dispute Resolution however he declined to opportunity to request an adjournment and indicated that the Landlord was prepared to proceed with the hearing.

Issue(s) to be Decided

The issues to be determined are whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Residential Tenancy Act (Act)*, should be set aside; whether there is a need for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; whether the Tenant should be given authorization to change the locks to the rental unit; whether there is a need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; and whether the Tenant is entitled to reduce the rent or to a monetary Order as compensation for the loss of quiet enjoyment of the rental unit.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on November 05, 2010; that the parties entered into a written tenancy agreement that requires the Tenant to pay monthly rent of \$425.00 on the first day of each month; and that the Tenant has not paid his rent for February of 2011.

The Building Manager stated that he posted a Ten Day Notice to End Tenancy on the door of the rental unit on February 02, 2011. The Tenant acknowledged finding this Notice on the door of his rental unit on February 03, 2011. A copy of this Notice to End Tenancy was submitted in evidence by the Tenant. The Building Manager stated that he made a note on the Notice to End Tenancy that he "hand delivered" the Notice on February 02, 2011. At the hearing he stated that he did not personally deliver the Notice to the Tenant although he personally posted it on the Tenant's door.

The Ten Day Notice to End Tenancy that was received by the Tenant on February 03, 2011 declared that the Tenant is presumed to have accepted that the tenancy is ending and that the Tenant must move out of the rental unit by the date set out in the Notice unless the Tenant pays the outstanding rent or files an Application for Dispute Resolution within five days of the date they are deemed to have received the Notice. The Tenant applied to dispute this Notice to End Tenancy on February 07, 2011.

The Ten Day Notice to End Tenancy that was received by the Tenant on February 03, 2011 declared that the Tenant had failed to pay rent of \$450.00, although it did not declare when the outstanding rent was due.

The General Manager stated that when he realized the Ten Day Notice to End Tenancy did not declare when the outstanding rent was due he wrote the Tenant a letter in which he advised him that the Ten Day Notice that was issued on February 02, 2011 has been rescinded. The General Manager stated that this letter was posted on the Tenant's door on February 11, 2011. The Tenant stated that he located this letter on his door on February 14, 2011.

The Landlord and the Tenant agree that the Landlord served a second Ten Day Notice to End Tenancy, which was dated February 11, 2011. The Tenant stated that he has not yet disputed this Notice to End Tenancy and both parties indicated that they understood the validity of the second Notice to End Tenancy is not a matter to be determined in these proceedings.

The Tenant is seeking authorization to change the locks to his rental unit and to have conditions set on the Landlord's right to enter the rental unit as he believes the Landlord is entering his rental unit when he is not at home. He stated that he frequently places a piece of paper in a manner that will allow him to determine whether people are entering his rental unit and on several occasions he has noticed that the paper has moved when he returns to his rental unit. He assumes that the Landlord is the person entering his unit as there is no sign of forced entry, nothing is missing from the rental unit, and the Landlord is the only person with keys to the rental unit.

All three agents for the Landlord in attendance at the hearing stated that they have not entered the rental unit without proper notice and they are not aware of anyone entering the rental unit without authority. The General Manager stated that the locks to the rental unit were changed at the beginning of this tenancy.

The Tenant stated that his rent was paid by cheque for December of 2010 and January of 2011 and he has not received a rent receipt for those payments. He has applied for an Order requiring the Landlord to provide rent receipts for those payments.

The Tenant stated that he and an agent for the Landlord briefly inspected the rental unit on November 05, 2010; that he did not have time to conduct a thorough inspection of the rental unit on November 05, 2010; that he signed the Condition Inspection Report without adequately inspecting the rental unit; and that he inspected the rental unit more thoroughly once he moved into the rental unit found it to be in reasonably good condition.

The Tenant stated that he has never been provided with a copy of the Condition Inspection Report that was completed on November 05, 2010 and he has applied for an Order requiring the Landlord to provide a copy of that report. The Building Manager and the Maintenance Worker stated that a copy of this report was placed under the Tenant's door on February 15, 2011 and the General Manager readily agreed to provide the Tenant with another copy of that report. The General Manager stated that the Tenant can attend the business office in the residential complex and obtain a copy of that report at the Tenant's convenience.

The Tenant stated that he has never been provided with a copy of the tenancy agreement and he has applied for an Order requiring the Landlord to provide a copy of the agreement. The Building Manager and the Maintenance Worker stated that a copy of the tenancy agreement was placed under the Tenant's door on February 15, 2011 and the General Manager readily agreed to provide the Tenant with another copy of the agreement. The General Manager stated that the Tenant can attend the business office

in the residential complex and obtain a copy of the tenancy agreement at the Tenant's convenience.

The Tenant is seeking compensation of \$15.00 per day for the loss of the quiet enjoyment of his rental unit. He is seeking compensation for the loss of the quiet enjoyment of his rental unit, in part, because of a bedbug and cockroach infestation in this unit that he noticed sometime in December of 2010. The Tenant stated that he verbally informed the Building Manager of the infestation sometime in December, although he was unable to estimate when the problem was reported. The Tenant submitted no evidence to corroborate his statement that there are bedbugs or cockroaches in his rental unit.

The Building Manager stated that the Tenant has never advised him of a problem with bedbugs or cockroaches in the rental unit.

The Tenant is seeking compensation for the loss of the quiet enjoyment of his rental unit, in part, because of the person living above him disturbs him by walking around during the late night/early morning hours and by the person living beside him who talks all night, presumably to himself. The Tenant stated that he verbally informed the Building Manager of these disturbances sometime in December, although he was unable to estimate when the problem was reported. The Tenant submitted no evidence to corroborate his statement that his neighbours are being unreasonably noisy.

The Building Manager stated that the Tenant has never advised him that he is being disturbed by his neighbours.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a tenancy agreement that requires the Tenant to pay monthly rent of \$425.00 on the first day of each month and that the Tenant has not paid any of the rent that was due on February 01, 2011.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord even if the landlord fails to comply with the *Act*. Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the date the rent is due by giving notice to end the tenancy effective on a date that is not earlier than ten days after the date the tenancy receives the notice.

On the basis of the undisputed evidence presented at the hearing, I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was posted on the Tenant's door on February 02, 2011 and was received by the Tenant on February 03, 2011. I find that the notation regarding the Notice to End Tenancy being "hand delivered" is irrelevant to the issue of service, as the parties do not dispute that the Notice to End Tenancy was posted on the door.

I find that the Ten Day Notice to End Tenancy that was posted on the Tenant's door on February 02, 2011 was valid, in spite of the fact that it did not indicate the date on which the outstanding rent of \$450.00 was due. In reaching this conclusion I was influenced, in part, by the Tenant's acknowledgement that he has not paid his rent for February of 2011, which causes me to believe that the Tenant knew, or should have known, that the outstanding rent was from the month of February of 2011.

In determining that the Ten Day Notice to End Tenancy was valid in spite of the fact that it did not indicate the date on which the outstanding rent of \$450.00 was due, I was influenced, in part, by section 10(2) of the *Act*, which stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. In my view the failure to declare that the outstanding rent was due on February 01, 2011 did not affect the substance of the Notice and was not intended to mislead the Tenant in regards to the arrears.

Residential Tenancy Branch policy #11 suggests that a landlord cannot unilaterally withdraw a Notice to End Tenancy but with the consent of the party to whom it is served a Notice to End Tenancy may be withdrawn prior to the effective date of the Notice. I find that the letter that was posted on the Tenant's door by the Landlord on February 11, 2011 clearly expressed the Landlord's desire to withdraw the Ten Day Notice to End Tenancy that was posted on February 02, 2011. I find that the Tenant's application to set aside the Notice to End Tenancy and his statement at the hearing that he does not wish the tenancy to end at this time clearly expresses his consent to allow the Landlord to withdraw the Ten Day Notice to End Tenancy. As the Ten Day Notice to End Tenancy has been withdrawn with the consent of both parties, I find that I do not need to consider the Tenant's application to set aside this Notice to End Tenancy.

Based on the absence of evidence that corroborates the Tenant's suspicion that the Landlord is entering his rental unit and that refutes the testimony of all three agents for the Landlord that they are not entering the rental unit without lawful authority and they are unaware of anyone entering the unit without lawful authority, I find that the Tenant has failed to establish that there is a need for an Order setting conditions on the Landlord's right to enter the rental unit or that the Tenant has a right to change the locks to the rental unit. On this basis, I dismiss the Tenant's application for an Order setting conditions on the Landlord's right to enter the rental unit and for authorization to change the locks to the rental unit.

As the *Act* does not require landlords to provide receipts for rent that is paid by cheque and the Tenant's rent was paid by cheque in December of 2010 and January of 2011, I dismiss the Tenant's application for an Order requiring the Landlord to provide rent receipts for those payments.

As the Landlord and the Tenant inspected the rental unit on November 05, 2010, albeit briefly, and the Tenant again inspected the rental unit after he moved in, at which time he satisfied himself that the rental unit was in good condition, I find there is no need to order the Landlord to conduct another condition inspection. In the event that the Tenant

feels the condition inspection that was conducted at the beginning of the tenancy or the report that was completed pursuant to that inspection are inadequate, the Tenant is at liberty to raise those concerns at any future proceedings where the details of that inspection or the report are at issue.

Section 23(5) of the *Act* requires landlords to provide tenants with a copy of a Condition Inspection Report that is completed at the start of a tenancy. While I accept the Landlord's evidence that a copy of this document was placed under the Tenant's door on February 15, 2011, for some unknown reason the Tenant has not located that document. I therefore Order the Landlord to provide the Tenant with a copy of that Condition Inspection Report as soon as the Tenant attends at the business office in the residential complex, during normal business hours, and requests a copy of the Condition Inspection Report.

Section 13(3) of the *Act* requires landlords to provide tenants with a copy of their tenancy agreement. While I accept the Landlord's evidence that a copy of this document was placed under the Tenant's door on February 15, 2011, for some unknown reason the Tenant has not located that document. I therefore Order the Landlord to provide the Tenant with a copy of his tenancy agreement as soon as the Tenant attends at the business office in the residential complex, during normal business hours, and requests a copy of the agreement.

There is a general legal principle that places the burden of proving that damage occurred on the person who is claiming compensation for damages, not on the person who is denying the damage. In these circumstances, the burden of proving that the Tenant's right to quiet enjoyment has been breached rests with the Tenant.

I find that the Tenant has submitted insufficient evidence to show that he is entitled to compensation for a breach of his right to quiet enjoyment because he had bedbugs or cockroaches in his rental unit. In reaching this conclusion, I was influenced by the absence of evidence that corroborates the Tenant's statement that there were bugs in the rental unit. I was also heavily influenced by the absence of evidence that corroborates the Tenant's testimony that he reported the problem to the Building Manager or that refutes the Building Manager's statement that the Tenant did not report the problem. I find that the Tenant failed to establish that he attempted to mitigate the problem by reporting it to the Landlord. On this basis, I find that the Tenant is not entitled to compensation for the loss of quiet enjoyment of his rental unit in relation to an alleged bug infestation.

I find that the Tenant has submitted insufficient evidence to show that he is entitled to compensation for a breach of his right to quiet enjoyment because his neighbors are being unreasonably noisy. In reaching this conclusion, I was influenced by the absence of evidence that corroborates the Tenant's statement that his neighbors are being unreasonably noisy. I was also heavily influenced by the absence of evidence that corroborates the Tenant's testimony that he reported the problem to the Building Manager or that refutes the Building Manager's statement that the Tenant did not report

the problem. I find that the Tenant failed to establish that he attempted to mitigate the problem by reporting it to the Landlord. On this basis, I find that the Tenant is not entitled to compensation for the loss of quiet enjoyment of his rental unit in relation to noisy neighbors.

Conclusion

I find that the Tenant has failed to establish that his right to the quiet enjoyment of his rental unit has been breached and I therefore dismiss his application for compensation for the loss of the quiet enjoyment of his rental unit. I find that the Tenant is not entitled to any financial compensation for any issues in dispute at these proceedings as his tenancy has not been significantly impacted by the Landlord's failure to provide a copy of the Condition Inspection Report or the tenancy agreement.

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: February 17, 2011.

Residential Tenancy Branch