



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPC, MNDC, FF

Introduction

This cross-application was originally scheduled to be heard May 15, 2012 to deal with a tenant's request to cancel a Notice to End Tenancy for Cause and a landlord's application for an Order of Possession for cause, among other issues. Both parties appeared at the hearing and a number of preliminary issues were raised by the parties at the outset of the hearing. The hearing was reconvened on June 14, 2012 and both parties appeared at the reconvened hearing.

Preliminary and procedural matters

Aside from the request to cancel the Notice to End Tenancy, in filing the tenant's application the tenant identified several issues under dispute, including: dispute of a rent increase, requests for repair orders, compliance orders, and suspension or conditions on the landlord's right to enter the unit. For disputes to be combined on an application they must be sufficiently related. I determined that not all the issues on the tenant's application were sufficiently related to the primary issue which was the Notice to End Tenancy. Therefore, I informed the parties that I would deal with the tenant's request to cancel the Notice to End Tenancy for Cause and dismiss the balance of the tenant's application with liberty to re-apply.

On the first hearing date the landlord submitted that she received the tenant's evidence package on May 7, 2012 but that the tenant's application to dispute the Notice was not received within three days of making the application. The tenant submitted that he did deliver his application to the receptionist at the landlord's service address and had a receipt to prove it. The tenant was ordered to provide the delivery receipt to me and the landlord prior to the reconvened hearing. I received delivery receipts dated April 27, 2012 and May 7, 2012. At the reconvened hearing the landlord submitted that she did not receive the delivery receipt as ordered. The tenant was of the position he was not ordered to serve it upon the landlord. The tenant provided the phone number of the landlord's office and I called the receptionist. The receptionist did not consent to being added to the teleconference call but confirmed to me that the tenant did deliver two packages to the office and she signed two delivery receipts but she did not know the

dates of delivery. The receptionist confirmed that the office then advises the landlord there are documents for her or sends the documents to her via courier. I informed the parties that I would consider the tenant to have made an application to dispute the Notice to End Tenancy within the time lines required under the Act and I would proceed to hear the merits of the dispute and make a decision as to whether the Notice should be upheld or cancelled.

On the first hearing date the tenant confirmed receipt of the landlord's evidence package that was served by registered mail sent May 10, 2012; however, the tenant submitted that the landlord did not supply an inspection report of the fire department. The tenant submitted he tried to obtain it himself but that he was told by the fire department the report would only be released to the landlord. The landlord submitted that she did not receive any other documents from the fire department that were not already submitted in her evidence package. The landlord was ordered to obtain confirmation from the fire department and serve the evidence to me and the tenant before the reconvened hearing. I received a copy of an email the landlord received from the fire inspector and the landlord testified she slid this same document under the tenant's door. The tenant denied receiving the document. I read the content of the submitted document to the tenant and permitted him to respond.

At the first hearing date the tenant submitted that he wished to amend a document submitted as evidence. Upon enquiry, the tenant confirmed that he had authored the letter allegedly signed by his electrician and that after speaking to the electrician he determined that there was an error in the letter. When I pointed out that the letter appeared to be signed by the electrician and the tenant could not amend the letter the tenant responded by stating the electrician signed it without reading it.

The landlord pointed out that the copy of the letter provided to her was not signed, nor was the letter allegedly written by a realtor, and the document signed by the tenant's cleaner/girlfriend. The landlord further submitted that she had contacted the realtor named on the letter and contacted him. The realtor informed her he did not provide or sign any letter for the tenant. I noted that these documents were signed in the evidence package submitted to me. The tenant explained that he was unaware that the landlord was entitled to receive signed copies of the documents. I informed the parties that I would assign the appropriate weight to the unsigned documents and that the parties were at liberty to present witnesses at the reconvened hearing. At the reconvened hearing the tenant stated the realtor refused to speak to him anymore because of the subject letter.

During both teleconference calls the parties were cautioned several times not to interrupt each other or me during the hearing. The tenant was cautioned in particular to

refrain from making antagonistic or derogatory comments towards the landlord. Despite the several warnings given to both parties that inappropriate conduct would not be tolerated, interruptions were so frequent that I determined an oral hearing would be unproductive. Upon making that determination I informed the parties that my decision would be made based upon written submissions and oral evidence I had heard up to that point. The teleconference call was then ended.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause be upheld or cancelled?
Is the landlord entitled to recover locksmith costs from the tenant?

Background and Evidence

The tenancy commenced several years ago. The tenant is required to pay rent on the 1st day of every month. The landlord served the tenant a 1 Month Notice to End Tenancy for Cause dated April 23, 2012 with a stated effective date of May 24, 2012 (the Notice). The Notice indicates the reasons for ending the tenancy are:

- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park

Landlord's submissions

In February 2012 the landlord observed an extension cord running from an electrical outlet in the hallway adjacent to the tenant's unit and under the door of the rental unit. The landlord informed the tenant verbally and in writing that such action constituted stealing electricity. The landlord had a repair man cover the electrical outlet so that a cord could not be plugged in again.

On April 20, 2012 the landlord was in the tenant's unit discussing an unrelated matter with the tenant when she observed a portable heater operating from the tenant's closet. There are no electrical outlets in the closet. The subject closet is on the other side of the wall as the electrical outlet in the common hallway that was covered over in February 2012. The landlord asked the tenant if he had tampered with the electrical wires and the tenant admitted that he had. The landlord looked into the closet and saw the heater's cord stretched towards the wall. The landlord left but returned five minutes

later. When the landlord knocked on the door she could hear the tenant disconnecting the heater.

On April 23, 2012 the landlord smelled smoke coming from the unit and concerned about unsafe wiring the landlord knocked on the rental unit door. The tenant's girlfriend answered the door and the landlord informed the tenant's girlfriend that she wanted to inspect the closet. The tenant's girlfriend blocked the landlord's way and informed the landlord that she would not permit the landlord to enter the unit upon instructions from the tenant. The landlord called the police and after waiting for the tenant to return home the landlord entered the unit with the police. The landlord found the closet stuffed full of possessions, some too heavy for her to move, precluding her from inspecting the area where the tenant had tampered with the wiring. The landlord then served the subject Notice to End Tenancy upon the tenant in the presence of the police

The landlord submitted that the residential property is a multiple unit building constructed in the 1940's and is of wood frame construction. Should a fire originate in the walls would spread extremely quickly to other units. The tenant's actions have put the health and safety of all of the occupants and the landlord's property at extreme risk.

The landlord provided a close up photograph of the wall that was crudely patched with drywall mud after the tenant disconnected the heater. The landlord also provided photographs of possessions in the closet and the covered electrical outlet in the hallway.

Subsequent to the issuance of the Notice the tenant changed the locks to the unit without authorization or consent of the landlord. The landlord incurred a cost of \$140.00 to gain entry of the rental unit on May 2, 2012 to let the fire department in to inspect the unit. The landlord provided a receipt for the locksmith and the fire department's history report: both of which show the inspection took place on May 2, 2012.

Tenant's position

The tenant provided a written sequence of events entitled "Events leading to Eviction Notice". The document outlines what transpired on "April 24, 2012"; however, it would appear that the tenant is describing what took place on April 23, 2012. The tenant's submission is silent as to events that took place in February 2012 with respect to the extension cord in the hallway and the landlord's visit of April 20, 2012.

Some of the events were consistent with the landlord's recollection and there were inconsistencies, including the following submissions: the tenant's "cleaner" informed the tenant that on April 23/24, 2012 the landlord did gain entry in the unit before the police

arrived and was digging in the closet. The landlord left after being told to leave by the tenant on the telephone. The landlord returned at a later time with the police. Upon returning home the tenant allowed the landlord and police to enter the unit "under protest". The police commented to the tenant that there was no obvious sign of a fire or safety hazard that would warrant the search continuing.

The tenant claims he had the rental unit inspected by a certified electrician. The tenant wrote a letter with the electrician's name at the bottom. The electrician signed the letter that was submitted to me as evidence without reading it first. The letter contains an inaccuracy according to the tenant. The letter has a date of April 26, 2012 but does not indicate when the inspection took place.

The rental unit was subsequently inspected by the fire department and it received a "passing" grade.

The tenant provided an out of focus photograph of a closet taken much further away from the wall than the landlord's photograph.

The tenant submitted that there have been heating problems in the building and other repair issues that the tenant has pressured the landlord to repair. The tenant is of the position the Notice to end Tenancy was issued due to the pressure he has put the landlord under to make repairs, the landlord being spiteful, and the length of his tenancy.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

I accept that unauthorized tampering with wiring in an older, wood-frame, multiple-unit building by a person lacking proper training in electrical wiring building puts the health and safety of other occupants at extreme risk. I also accept that connecting personal appliances to a building's electrical system is stealing and constitutes an illegal activity. It is undisputed that the landlord did not authorize the tenant to make alterations to the wiring and the tenant is not a trained electrician. Thus, the issue for me to determine is whether the landlord has shown, on the balance of probabilities that the tenant tampered with the building's wiring in order to gain an electricity supply for his personal heater.

Based upon the evidence before me and on the balance of probabilities, I prefer the landlord's submissions over those of the tenant, and I find the landlord has satisfied me that the tenant did tamper with the building's electrical wiring in order to steal electricity for his own use. I make my decision based upon the following factors:

- I found the landlord's photographs showing a crudely patched hole in the closet wall and the covered hallway outlet consistent with the landlord's submissions.
- The inspection history report prepared by the fire department on May 3, 2012 provided a detailed description of the landlord's concerns leading up to the inspection and the description is consistent with her submissions during this proceeding. The fire department's report also indicates the following occurred on May 2, 2012:
 - The owner and a Fire Prevention Officer attended the property to gain access to the suite and they found a note attached to the door indicating the landlord was not to enter unless the tenant was home.
 - An attempt was made to enter the unit and it was determined that the dead bolt lock on the door had been changed.
 - A lock smith was contacted and after some difficulty the lock smith was able to gain entry.
 - It was found inside the closet that an area above the hallway electrical outlet had been damaged and re-mudded with dry wall mud. No heating appliance was discovered but it appeared that an attempt was made to conceal damage done to the wall to access the electrical outlet.
 - The handyman was present during the inspection and he would open the dry wall area inside the closet to ensure the electrical wiring has not been damaged. Any repairs will be made at that time.
- In contrast, the tenant provided less a less detailed photograph taken on an unknown date and a letter allegedly signed by an electrician that the electrician did not write or read before signing. Nor did the tenant provide a response to the allegations as to landlord finding an extension cord running from the hallway outlet or the events that took place on April 20, 2012. I recognize that the oral component of the hearing was ended without hearing all oral testimony or submissions of the tenant; however, the early end of the teleconference call is directly attributable to the tenant's conduct during the teleconference call. This is a consequence of inappropriate conduct at a hearing.

In light of the above, I uphold the Notice to End Tenancy. The effective date of the Notice, automatically changed to read May 31, 2012 under section 53 of the Act, has passed and I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

I find the landlord entitled to recover the amount of \$140.00 paid to the locksmith as the Act provides for the limited circumstances a tenant may change the locks. A tenant is not permitted to change locks without the consent of the landlord or the authorization of a Dispute Resolution Officer. The tenant did to have proper authorization to change he locks and the landlord has established that this violation cost the landlord \$140.00.

I further award the \$50.00 filing fee to the landlord. Accordingly, I authorize the landlord to deduct \$190.00 from the tenant's security deposit in satisfaction of this award.

Conclusion

The Notice to End Tenancy has been upheld. The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been awarded \$190.00 for the locksmith costs and the filing fee. The landlord is authorized to deduct \$190.00 from the tenant's security deposit in satisfaction f this award.

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: June 22, 2012.

Residential Tenancy Branch