Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, MNSD, ERP, PSF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent, dated October 26, 2014 (the 10 Day Notice), pursuant to section 46;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit, pursuant to section 38;
- an order to the landlord to make emergency repairs for health or safety reasons, pursuant to section 33; and
- an order to the landlord to provide services or facilities required by law, pursuant to section 65.

The tenant and former landlord DM ("landlord") attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The two new current landlords, DRC and DMC ("the two new landlords"), of the rental unit also attended the hearing and DMC made limited oral submissions. The tenant connected to the hearing late at 11:09 a.m., as he had difficulty connecting with the telephone system.

The tenant testified that he originally filed his application for dispute resolution on October 31, 2014 with the Residential Tenancy Branch ("RTB"). However, the tenant subsequently made an amendment to his application and had to wait additional time before he received an amended copy of the application package back from the RTB. He testified that he served the landlord soon after receiving the amended application package back from the RTB.

The tenant testified that he served the landlord with a copy of the amended application for dispute resolution hearing package ("Application") by placing it on the landlord's office counter and advising an agent of the landlord working there at the time, on November 18, 2014. Although this method of service delivery is not one that is allowed under section 89 of the *Act*, the landlord confirmed that he received the tenant's Application and was notified of this hearing. Based on the sworn testimony of the parties, I find that the landlord has received the tenant's Application and that there would be no denial of natural justice in proceeding with this hearing and considering the tenant's Application.

The landlord testified that he served the tenant with his written evidence package by posting it to the door of the tenant's rental unit on November 20, 2014. The landlord stated that the new landlord DRC witnessed this posting. The tenant confirmed that he received the landlord's written evidence. The landlord faxed a copy of his written evidence to the RTB on November 20, 2014. At the time of the hearing, I had not yet received a copy of the landlord's evidence. The landlord advised that he would send a copy of the 10 Day Notice via facsimile to the RTB office as soon as possible on November 21, 2014. I received a copy of the 10 Day Notice on November 24, 2014 and reviewed it before writing my decision. To date, I still have not received any other written evidence from the landlord, but given the settlement in this matter, I do not find it necessary to review those documents.

Preliminary Issues

During the hearing, there was some confusion regarding the tenant's original and amended application. The tenant's original application was to:

1) cancel a notice for unpaid rent;
2) obtain an order for the landlord to make emergency repairs; and
3) provide services or facilities required by law.

The tenant's amended application removed the relief to cancel the 10 Day Notice and added monetary orders sought for: 1) compensation for damage or loss; and 2) the return of the tenant's security deposit. The orders for the landlord to make emergency repairs and provide services or facilities, remained in the amended application.

The tenant testified that he amended his application to remove the relief to cancel the 10 Day Notice because he intended to vacate the rental unit on December 1, 2014. The tenant clarified during the hearing that he had filled in the box for this relief and then crossed off the box. The relief was sought in his original application, dated October 30, 2014. The landlord and the two new landlords attended the hearing assuming that the

tenant had still sought the relief to cancel the 10 Day Notice. The landlord had the 10 Day Notice in front of him and was referencing it during the hearing. I find that the tenant was uninformed and unaware that he was cancelling relief that was sought in his original application on the basis that he was vacating the unit at a later date than the effective date in the 10 Day Notice. Both the landlord and two new landlords were aware that the tenant had been seeking to cancel the 10 Day Notice and were prepared to deal with this relief at this hearing. Accordingly, given the settlement outlined below, and the intention of both parties and the two new landlords to settle the issue regarding the 10 Day Notice and the ending of the tenancy, I have amended the tenant's application to again include the tenant's relief to cancel the 10 Day Notice. I find no prejudice to the landlord or two new landlords in doing so.

During this hearing, the tenant withdrew his application for: 1) an order for the landlord to make emergency repairs for health or safety reasons and; 2) an order for the landlord to provide services or facilities required by law. Accordingly, these claims are withdrawn.

The tenant also withdrew his application for return of his security deposit in the amount of $500.00, which he included in the $1,250.00 total sought for his monetary order, as he was under the mistaken impression that his security deposit was not transferred over to the two new landlords. The landlord confirmed that the two new landlords received the tenant's security deposit in the amount of $500.00 when it was transferred to them along with all tenancies, when they purchased the property on November 1, 2014. The tenant agreed that his security deposit would be dealt with at the end of this tenancy, in accordance with the *Act*. Accordingly, this claim is withdrawn.

Given the above, the tenant confirmed during the hearing that he would still be pursuing his claim for a monetary award of $750.00 for damage and loss from the landlord.

The hearing proceeded on two remaining orders:

1) to cancel the 10 Day Notice; and
2) to obtain a monetary order in the amount of $750.00 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Issue(s) to be Decided

Should the landlord's 10 Day Notice be cancelled?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this tenancy began on March 1, 2014 and the tenant continues to reside in the rental unit, to date. Monthly rent in the amount of $1,000.00 is payable on the first day of each month. A security deposit in the amount of $500.00 was paid by the tenant on February 7, 2014. The tenant and his family occupy the main floor of a house, while another tenant occupies the basement suite of the house.

The landlord testified that the rental property was purchased by the two new landlords on November 1, 2014. He testified that all existing tenancies transferred over to the two new landlords on this date.

The landlord testified that he served the tenant personally at his rental unit, with a 10 Day Notice on October 26, 2014, before the two new landlords purchased and assumed the tenancy. The tenant confirmed that he received the notice from the landlord. The 10 Day Notice has an effective move-out date of November 6, 2014 and is in the landlord's name.

During the hearing, the tenant testified that he intended to vacate the rental unit on December 1, 2014, as he had found a new place to rent. The two new landlords agreed verbally during the hearing, that they would allow the tenant to vacate the rental unit on December 1, 2014. The new landlord DMC stated during the hearing, that she was not seeking an order of possession against the tenant.

The landlord stated that rent for September 2014 was fully paid by the tenant. He states that the tenant only paid a partial amount of $300.00 for October 2014 rent. The tenant testified that he was only able to pay $300.00 for October 2014 rent because he was injured and had received a cheque from WCB and paid the landlord the amount that he was able. He states that the landlord agreed to this reduced amount until the tenant could afford to pay the remainder when he received his next cheque from WCB. He states that the landlord then served him with the 10 Day Notice a few days later.

The landlord states that November 2014 rent has not been paid by the tenant. The tenant testified that he offered November 2014 rent to the new landlord DMC, but she refused to take it because she wanted to evict him.

The tenant testified that he was seeking compensation from the landlord only, not the two new landlords. He stated that he was without any running water in his rental unit for approximately three weeks from September 23, 2014 to October 11, 2014, while the landlord had possession and ownership of the property. He states that he had to drive far into town and purchase 18 litre jugs of water, which his disabled wife had to carry to the rental unit. Because the tenant was disabled and on WCB, he was unable to lift anything over five pounds. He then boiled this water and used it for bathing and washing dishes. He was also required to take his laundry to the laundromat to be washed. The tenant states that this lack of water problem has occurred a number of times during his tenancy. He further states that the water had a bad odour and was undrinkable.

The tenant claims $125.00 for fuel for a 10 kilometre roundtrip every three days to go into town and purchase the 18 litre jugs of water. He also claims $75.00 ($5.00 x 5 loads = $25.00 per week x 3 weeks) for five loads of laundry at $5.00 per load for each of three weeks. Overall, the tenant claims $250.00 per week for three weeks without water at his rental unit, which amounts to $750.00 total in compensation. He provided this monetary breakdown on a handwritten document, with his Application.

The tenant testified that he attempted to notify the landlord as soon as the problem began, but he was out of the country. He spoke with another tenant, SK (“SK”), who occupied the cabin on the rental property, who was served by the same water supply, and who expressed the same lack of water and inability to contact the landlord. The tenant did not have any emergency contact numbers for the landlord and was unable to notify him about the water problem at the time, as he did not know who to contact in the landlord’s absence.

The tenant spoke with the landlord upon his return from Scotland on October 10 or 11, 2014, wherein the landlord indicated he would undertake a bypass of the chlorination system. The tenant had repeated conversations with the landlord about the water problem during the remainder of October 2014, when the landlord still had possession and ownership of the rental unit. The tenant agreed that the landlord had kept him apprised of the attempts to fix the water problem. The tenant agreed that the landlord had provided invoices for service calls related to fixing the water problem on September 30, 2014 and October 1, 2014, with the landlord’s written evidence, but stated that the problem continued until approximately October 11, 2014.

The landlord testified that the rental property has a sophisticated water system that services a cabin, store and the house that the tenant occupies. He states that he was out of the country from September 18 to October 10, 2014. The landlord testified that

he left his assistant “T” in charge of the rental property while he was away and that T had two emergency numbers to contact, in the event of a water problem. He states that he was aware that a phone call was made to the landlord’s office regarding this water problem on September 30, 2014 by SK in the cabin. On the same day, T phoned the water company that has been used by the landlord for the last nine months. “C,” who built the water system, from the company “ES,” attended on September 30, 2014 to fix the problem and had the water running the same day. The landlord provided an invoice for this service call, to the tenant, as part of his written evidence. On October 2, 2014, the tenant SK came in to pay her rent and did not mention any problems with the water. On October 10, 2014, the landlord received another call from SK regarding the water problem and C attended again to fix the problem and had the water running that same day. The landlord stated that he did not have an invoice for this date because he was not billed for the bypass on the chlorinated system that was performed. The landlord states that there were no further calls about a water problem after October 10, 2014.

The landlord testified that he spoke with the tenant around October 10 or 11, 2014, after he returned from his trip, regarding the water problem. The landlord said that he spoke to the tenant about the efforts to fix the water problem throughout the remainder of October 2014. He stated that the water system was shut down from 9:00 a.m. to 3:00 p.m. one day in October 2014, after he returned from his trip, in order to fix the water problem.

Analysis

Pursuant to section 63 of the *Act,* the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time: including cancellation of the landlord’s 10 Day Notice and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement:

1. Both parties and the two new landlords agreed that this tenancy will end by 1:00 p.m. on December 1, 2014, by which time the tenant will have vacated the rental unit;
2. The former landlord, DM, agreed to pay the tenant the total amount of $375.00 by 5:00 p.m. on November 24, 2014.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties and the two new landlords.

Conclusion

The landlord's 10 Day Notice, dated October 26, 2014, is hereby cancelled and of no force and effect.

The tenant's application for the following was withdrawn:

- authorization to obtain a return of all or a portion of the security deposit;
- an order to the landlord to make emergency repairs for health or safety reasons; and
- an order to the landlord to provide services or facilities required by law.

To give effect to the settlement reached between the parties, I issue the attached Monetary Order to be used by the tenant **only** if the former landlord DM does not abide by the terms set out in the above agreement. The tenant is provided with this Order in the above terms and the former landlord DM must be served with this Order in the event that the former landlord DM does not abide by the terms set out in their agreement. Should the former landlord DM fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: November 28, 2014

Residential Tenancy Branch