



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes AAT CNC LAT LRE OLC

Introduction

This hearing was convened in response to applications by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The application from the tenant requested:

- a cancellation of the 1 Month Notice to End Tenancy pursuant to section 47 of the *Act*;
- authorization to change the locks to the rental unit pursuant to section 70 of the *Act*;
- to be allowed access to the unit or site for the tenant or the tenant’s guest pursuant to section 70 of the *Act*;
- to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70 of the *Act*; and
- an Order directing the landlord to comply with section 62 of the *Act*.

Both the tenant and the landlord appeared at the hearing. The landlord was represented at the hearing by agent, J.M. (the “landlord”). Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord explained that a 1 Month Notice for Cause was given to the tenant in person on July 31, 2017. The tenant acknowledged receipt of this notice. Pursuant to section 88 of the *Act*, the tenant is found to have been duly served with the landlord’s 1 Month Notice.

On August 9, 2017 the tenant applied for dispute resolution of the 1 Month Notice served on him July 31, 2017. The tenant could not recall how or when he served his application for dispute on the landlord, but the landlord acknowledged receiving the tenant’s hearing package. The landlord is found to have been duly served under the *Act*.

On October 4, 2017 the parties entered a Mutual Agreement to End Tenancy. This document indicated that the tenant agreed to vacate the premises by 12:00 P.M. on October 15, 2017.

Issue(s) to be Decided

Can the tenant dispute the 1 Month Notice? Is the mutual agreement to end the tenancy signed by the tenant valid?

Can the tenant set conditions on the landlord's right to enter the rental unit?

Should the tenant be allowed to change the locks to the rental unit?

Should the landlord be directed to comply with the *Act*?

Should the tenant or his guests be allowed access to the rental unit?

Background and Evidence

Testimony provided at the hearing by the tenant explained that this tenancy began in March 2015. Rent was \$475.00 per month and a security deposit of \$275.00 and a pet deposit of \$40.00 continue to be held by the landlord.

The tenant stated that he wished to cancel the landlord's 1 Month Notice to End Tenancy and sought a monetary award of \$27,426.00 for loss that he has suffered under the tenancy.

The landlord argued that the parties had signed a Mutual Agreement to End Tenancy on October 4, 2017 and that this tenancy had terminated on October 15, 2017. She disputed whether the tenant had standing to submit his application for dispute, because it was her opinion that this tenancy ended at 12:00 P.M. on October 15, 2017, the date and time that the Mutual Agreement to End Tenancy took effect.

When asked about the Mutual Agreement to End Tenancy submitted to the hearing as part of the landlord's evidentiary package, the tenant explained that he had signed this document under duress and he felt that it should not be considered. As part of his evidentiary package, the tenant provided written submissions which detailed the pressure he felt from an advocate he had consulted, to sign a Mutual Agreement to End Tenancy. The tenant continued by explaining that his advocate informed him that his

case was, “unwinnable” and that if he failed to sign the Mutual Agreement, he would not be able to apply for supportive housing in the future.

Included in the landlord’s evidentiary package is an addendum to the Mutual Agreement which notes, “the parties further agree that they agree to cancel the Dispute Resolution Hearing on this matter with respect to Notice to End Tenancy from the Landlord dated July 31, 2017.”

In addition to various orders directing the landlord to comply with the *Act*, the tenant has applied for a Monetary Order for \$27,426.00 as follows:

ITEM	AMOUNT
Loss of property (divider)	\$150.00
Loss of property (bike hook)	50.00
Return of Pet Deposit	450.00
Return of Security Deposit	450.00
Aggravated Damages	6,000.00
Moving Expenses	200.00
No access to rental unit and police attendance at rental unit	10,000.00
Invasion of Privacy/Illegal Entry	10,000.00
Wrongfully admitted to hospital	126.00
TOTAL =	\$27,426.00

Analysis

The tenant sought to cancel the landlord’s 1 Month Notice to End Tenancy for Cause. At the hearing, the landlord argued that this tenancy ended at 12:00 P.M., on October 15, 2017, the date and time that a signed Mutual Agreement to End Tenancy came into effect.

During the hearing the tenant acknowledged signing the Mutual Agreement, but said that it was done so under duress from his advocate. I do not find that sufficient evidence was presented at the hearing demonstrating that the tenant was unduly influenced or suffered from duress at the time he signed the Mutual Agreement. The tenant was

independently advised by a legal advocate that he had retained to assist him with his legal matter. It would be expected that the person would be acting in his best interests. Had the tenant been the victim of duress at the hands of his advocate, he had many resources available to him through which he could seek relief. Among the options which were available to the tenant include; speaking to the advocate's supervisor, requesting a different advocate, and bringing these concerns to the landlord. No evidence was presented at the hearing that the tenant pursued any of these avenues. Furthermore, the addendum signed by the tenant and the landlord indicates that the tenant was aware of the hearing on October 30, 2017, disputing the landlord's Notice to End Tenancy and agreed to cancel the hearing.

For these reasons, the tenant's application to cancel the Notice to End Tenancy is dismissed. As this tenancy ended at 12:00 P.M. on October 15, 2017, all aspects of the tenant's application concerning orders related to authorization to change the locks, allowing access to the unit, suspending or setting conditions on the landlord's right to enter the rental unit and orders directing the landlord to comply are dismissed. I will solely focus on the tenant's application for a monetary award of \$27,426.00.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

The tenant is seeking a monetary award of \$27,426.00 related to numerous items which he says he lost during the tenancy, and because of the mental distress that he says he has suffered at the hands of the landlord.

Residential Tenancy Policy Guideline #16 examines the issue of damages in more detail. It notes;

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant's application involves two aspects. Loss of property and damages that he said he experienced at the hands of the landlord. I find insufficient evidence was presented at the hearing to prove the value of the property which the tenant said was lost during this tenancy. The tenant said that the landlords threw out a divider and a bike hook; however, no receipts for the missing items were presented to the hearing, nor were any testimony presented to the age, characteristics or how these estimated figures of these lost items were reached. In addition, the photos that were provided as part of the tenant's digital evidence fail to show a bike hook or a room divider. For these reasons, I dismiss this portion of the tenant's monetary award.

In addition to lost items, the tenant has applied for damages related to the mental anguish he was subjected to by the landlord.

Residential Tenancy Policy Guideline #16 notes, "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Based on the testimony and written submissions presented at the hearing by the tenant, I do not find that landlord either deliberately or through negligence caused significant damage or loss. I understand that the tenant's interactions with the landlord may have been difficult due to the differing opinions on whether the tenant was welcome on the property; however, I find that the incidents involving the police and fire department as being justified due to public safety as the landlord explained that they had very real concerns regarding a fire that was accidentally set and reports of possible self-harm by the tenant. For these reasons, I dismiss the portion of the tenant's monetary application related to damages.

As part of his monetary application, the tenant had included a figure representing a return of his pet and security deposit. I have dismissed the tenant's application but find that the tenant has failed to apply for a return of his security or pet deposits. The tenant is at liberty to apply for these in a separate application.

Conclusion

The tenant's application is dismissed in its entirety.

I find that this tenancy ended by way of Mutual Agreement at 12:00 P.M., on October 15, 2017.

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 7, 2017

Residential Tenancy Branch