



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR MT RP RR MNDCT OLC

Introduction:

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 1:15 p.m. in order to enable the landlord to call into this teleconference hearing scheduled for 1:00 p.m. on June 19, 2018]. The tenant attended the hearing and was given opportunity to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant provided evidence that the landlord lives in another country and she served them with a 10 Day Notice to End the Tenancy for non-payment of rent dated April 12, 2018 to be effective April 24, 2018 by registered mail which the tenant said they received on April 17, 2018. The tenant said they served the landlord with their Application for Dispute Resolution dated April 20, 2018 by registered mail but was unable to provide proof of service, other than his oral statement. He said he was too busy to put the evidence of service online and was unable to provide postal service numbers in the conference as he said he was at work. The tenant applies:

- a) pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy;
- b) For compensation as follows:
 - (i) \$6734 for repairs plus \$4500 for maintenance of the property;
 - (ii) \$1500 for an agreed rent reduction;
 - (iii) \$8,000 rent rebate January to April while waiting for the landlord to negotiate services; and
 - (iv) \$1000 for cleaning the unit before occupancy; and
 - (v) Recovery of the filing fee.

Issues: Is the tenant entitled to any relief regarding rent?

Has the tenant proved on the balance of probabilities that they are entitled to compensation and in what amount?

Background and Evidence:

The tenant said the tenancy commenced April 1, 2017 on this large acreage on an island. Rent was \$2000 a month and they paid a security deposit of \$1000. He said there was an oral agreement that they would provide maintenance services for a reduction in rent. However, they were surprised in November 2017 to receive a demand letter from the landlord which demanded that they pay the \$300 a month from June 1, 2017 to November 30, 2017 (total \$1500) which they understood was the reduction for services rendered. They paid rent until November 28, 2017 when they received the letter and have not paid rent since. He said they have suffered unfortunate circumstances as he lost his car and driver and was stranded on the island for a time.

The landlord is claiming \$9500 was owed in rent in her 10 Day Notice to End Tenancy dated April 12, 2018 and the tenant is claiming a substantial amount for reimbursement for services rendered.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes that rent is owed or where the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from the rent. The tenant is disputing that they owe rent based on an oral agreement to provide maintenance services.

However, I find insufficient evidence that the Application for Dispute Resolution was served on the landlord or that she had any Notice of today's hearing. The Principles of Natural Justice and the Act provide that a respondent must have notice of a claim against them and have the opportunity to respond. I dismiss this Application for failure to provide sufficient evidence of service on the respondent landlord and I give the tenant leave to reapply. The tenant was cautioned to provide evidence of service in any future hearing and also evidence regarding his claim.

Conclusion:

I dismiss the application of the tenant and give him leave to reapply. Although a landlord may be granted an Order of Possession according to section 55 in these

circumstances, I find insufficient evidence of the arrangement between the parties as the landlord either was not notified or chose not to attend the hearing. For the landlord's information, she may submit evidence online for a hearing and call into the conference using the toll free number on the Notice of Hearing. She may also make her own Application for an Order of Possession and a Monetary Order for unpaid rent.

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 19, 2018

Residential Tenancy Branch