



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Dispute Codes:

CNC, RP, ERP

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to make repairs and for an Order requiring the Landlord to make emergency repairs.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside, and whether the Tenant is entitled to an Order requiring the Landlord to make repairs to the rental unit.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that shows this tenancy began on November 01, 2008, and that the Tenant is required to pay monthly rent of \$625.00.

The Agent for the Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*, was served on the Tenant indicating that the Tenant was required to vacate the rental unit on February 28, 2009. The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety or well-being of another occupant; that the tenant has caused extraordinary damage to the rental unit; that the tenant has not done required repairs to damage to the rental unit; and there has been a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after being given written notice to correct the breach. In order to end this tenancy, the Landlord is only required to establish that one of these reasons exists.

The Agent for the Landlord and the Tenant agree that ice accumulated on the exterior wall of the residential complex in the latter part of December of 2008, and that a Tenant's friend attempted to remedy that situation. The Agent for the Landlord contends that this attempt to remove the ice caused water to leak into the rental unit, which the Tenant denies. The following evidence was submitted that is relevant to this issue:

- A letter from the occupant of the rental unit above the Tenant's residence, in which the occupant stated that sometime prior to December 25, 2008 the Tenant's nephew to help her break ice away from the exterior wall and the drain pipe to relieve leaking in both apartments;
- A letter from a friend of the Tenant who stated that on December 28, 2008 or December 29, 2008 he observed the occupant living above the Tenant chipping ice away from the drain pipe beside her building, as water was running down the pipe, onto her balcony and into her apartment. He stated that he helped her remove the ice from the downspout, at which time the drain pipe separated. He stated that he reconnected the pipes, which stopped the water from running onto the occupant's balcony and down the exterior of the building;
- The Agent for the Landlord's statement that the Tenant's nephew removed the bottom section of the downspout from the gutter, causing water to run down the side of the building;
- A letter from roofing company, in which the employee stated that a portion of the gutter system on this residential complex had been removed, causing the water to run down the exterior off the building and to freeze on the exterior of the building during cold weather. The employee further stated that attempts to remove ice from stucco siding "can cause some problems" as it would need to be hit with "extreme force", which would cause the stucco to break away, allowing water to enter the building;
- A letter from a building restoration company, in which one of the company's owner's stated that he has examined the wall that is the subject of this dispute and he located dry rot in the area of the leak that caused him to conclude that there have been problems with moisture in the area for an extended period. He further stated that he found several areas on the exterior of the building where water could penetrate the building;
- A letter from an occupant who lives beside the Tenant's, who stated that she observed water damage in the Tenant's rental unit on, or about, December 15, 2008. She further stated that she observed the damage again on December 28, 2008 and noted that the problem had worsened. She further stated that the Tenant told her that the Landlord's would not repair the leak until sometime in March;
- Several photographs of the exterior and interior wall where the leak occurred.

The Agent for the Landlord stated that the Tenant first advised them there was water

leaking into his rental unit on December 22, 2008. She stated that she viewed the area at that time and confirmed there was water leaking into the rental unit. She stated that she viewed the rental unit again on January 14, 2009, at which time she noted that Tenant removed a significant amount of drywall from the living room of the rental unit. The Agent for the Landlord argued that the Tenant did not have the right to remove the drywall, as it did not constitute an emergency repair under section 33(1) of the *Act*.

The Landlord submitted a copy of a letter, dated January 15, 2009, in which the Tenant was advised to repair the damage he caused to the exterior wall of the residential complex and to the interior walls of his rental unit. The Landlord submitted a copy of a second letter, dated January 23, 2009, in which the Tenant was again advised to repair the damage he caused to the exterior wall of the residential complex and to the interior walls of his rental unit.

The Tenant stated that he first advised the Landlord of the leak in his rental unit on December 15, 2008, at which time he was told the problem would be repaired in March of 2009. In a letter to the Agent for the Landlord, dated January 28, 2009, he advised the Landlord that he removed the drywall and insulation because a piece had fallen from the wall and the insulation and drywall was wet and mouldy.

The Tenant submitted a letter, dated February 26, 2009, from his friend who confirmed that the drywall in the rental unit was wet and was falling off the wall. In the letter, the friend further stated that the Tenant removed the drywall from the wall on January 11, 2009.

The Advocate for the Tenant stated that the Tenant had been told by friends that he should remove the mould in the wall posed a potential health hazard. The Tenant submitted no evidence to show that the mould presented a health hazard.

The Tenant stated that on, or about, February 05, 2009 his friend heard water running in his bedroom wall. The Tenant stated that he investigated the problem by placing his hand through an access hole in the bedroom wall, and he found water was leaking through a valve in the water line. He speculates that the Landlord loosened this valve when he bled the lines for his heating system at the beginning of the tenancy, and he speculates that the water has been leaking since November of 2008.

The Agent for the Landlord stated that the Tenant advised them that water was leaking in the bedroom wall on February 05, 2009. She stated that her husband went to the rental unit and observed that the wall plate covering the access hole had been removed and that water was leaking from a cold water pipe that is not related to the heating system.

The Landlord submitted a copy of an invoice from Westisle Heating and Cooling, dated February 06, 2009, which indicates that he replaced a brass bleeder cap. The

technician stated on the invoice that the bleeder cap did not fall off and that it had to have been removed by somebody.

The Agent for the Landlord stated that the Tenant cracked the sliding portion of the living room window in the rental unit. The Tenant stated that the window was frozen shut sometime during the month of December and he accidentally broke it when he attempted to force the window open.

Analysis

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is responsible for the water damage that occurred in the rental unit. In reaching this conclusion, I considered the following:

- The letter from the occupant who lived above the Tenant who stated that there was a problem with water leaking in “both apartments” before the Tenant’s friend chipped ice away from the drain pipe and exterior wall, which causes me to conclude that the friend’s actions was not the cause of the leak;
- The letter from the Tenant’s friend who stated that he observed water leaking into the rental unit above the Tenant before he removed ice from the exterior of the building, which gives me further cause to conclude that the friend’s actions was not the cause of the leak;
- The letter from the occupant living beside the Tenant, who stated that she observed water leaking in the Tenant’s rental unit on, or about, December 15, 2008, which is before the friend of the Tenant states he removed ice from the exterior of the building, which gives me further cause to conclude that the friend’s actions was not the cause of the leak;
- A letter from a building restoration company, in which the owner stated that there is evidence of long term exposure to water, which gives me further cause to conclude that the friend’s actions was not the cause of the leak; and
- The photographs of the exterior of the building that show several areas that, in my opinion, demonstrate that the exterior of the building is not in good condition, which causes me to conclude that water could have leaked into the building because of the general disrepair of the exterior of the building.

The undisputed evidence is that the Tenant removed a significant amount of wet drywall and insulation from the living room wall of his rental unit.

Section 33 of the *Act* authorizes tenants to make emergency repairs under certain circumstances. The Act defines “emergency repairs” as repairs that are urgent; that are necessary for the health or safety of anyone or for the preservation or use of residential property; and are made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit, or the electrical

system.

In these circumstances, I find that removing the drywall from the living room wall cannot be considered an emergency repair. In reaching this conclusion, I was strongly influenced by the absence of evidence that establishes that mould in the wall presented a health hazard to the Tenant. In the absence of evidence that establishes there was a health hazard, I cannot conclude that there was an urgent need to remove the drywall. In reaching that conclusion, I was strongly influenced by the Tenant's evidence that he knew the Landlord intended to repair the wall in March of 2009.

I find that the Tenant caused significant damage to the rental unit when he removed the drywall and insulation from the rental unit. I specifically note that the Tenant did not have permission from the Landlord to remove the drywall and he did not have authority to remove the drywall under section 33 of the *Act*. Although I accept that the Landlord may have needed to remove some drywall and insulation in order to repair the damage caused by the leak, I find that the Tenant's actions prevented the Landlord from deciding on the nature of the repairs that were required. For example, the Landlord may have elected to dry the drywall as opposed to removing it, he may have elected to retain some or all of the insulation, or he may have elected to remove less of the drywall. The right to determine the nature of the repairs to be completed in these circumstances rests with the Landlord and not the Tenant.

I find, on the balance of probabilities, that the Tenant, or someone permitted on the property by the Tenant, removed the bleeder cap on a pipe in the bedroom wall. In determining that the Tenant or a person permitted into his rental unit is responsible for removing the cap, I placed significant weight on the technician's opinion that the cap had to have been intentionally removed.

I find that removal of the bleeder cap caused significant damage to the rental unit. Although the evidence has not established that the water that leaked after the cap was removed caused significant damage, I find that act damaged the water system in the rental unit, which required the services of a plumber to repair.

I find that the Tenant caused significant damage to the rental unit when he cracked the living room window. Although the Tenant contends that the window broke because he attempted to open it when the window was frozen, I find that the Tenant must have used excessive force to open that window.

Conclusion

I find that the Landlord has established that the Tenant caused extraordinary damage to the rental unit, by removing drywall and insulation from his living room wall, by removing a bleeder cap from a pipe in the bedroom wall, and by cracking the living room window. Although these damages, when considered individually, are not extraordinary, I find that

it constitutes extraordinary damage when the totality of the evidence is considered. In reaching this conclusion, I was strongly influenced by the fact that all of this damage occurred within the first two months of the tenancy.

As I have determined that the Landlord has satisfied the legislative requirements to end a tenancy for cause, I am dismissing the Tenant's application to set aside the One Month Notice to End Tenancy and I will grant the Landlord an Order of Possession, as requested at the hearing. Although the Landlord requested an early possession date, I am granting the Landlord an Order of Possession that is effective on March 31, 2009, as the Tenant has paid rent for the month of March.

As I have found that this tenancy is ending, I find that I do not need to consider the Tenant's application for an Order requiring the Landlord to make repairs to the rental unit.