



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a notice to end tenancy for cause, to order the landlord to comply with the Act, to order the landlord to make repairs to the unit, site or property and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on August 24, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Is the tenant entitled to an order for the Landlord to repair the rental unit?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on July 01, 2009. There is a dispute whether this is a month to month tenancy or a fixed term tenancy for six months. The rent for this unit was \$1,100.00 per month and is due on or before the 1st of each month. The tenants paid a security deposit of \$550.00, \$500.00 of which was paid at the end of June 2009 and \$50.00 on July 01, 2009.

The tenant testifies that when they viewed the property the old tenants were still in residence. The tenant informed the landlord that there were some items that would need her attention and the landlord confirmed she would deal with them. There was a verbal agreement between both parties that the tenants would do the yard work and would receive compensation in the form of an undisclosed rent reduction. On August 03, 2009 the property manager meet with the tenants and agreed to a \$100.00 deduction in rent for the yard work. The tenants did not think this was fair as they had completed over 70 hours of work in the yard and incurred additional costs with fertilizer and water bills.

The tenant testifies that she had a cheque ready to pay the rent but the property manager said he would talk to the landlord and discuss a fair amount for the deductions. Before he left he also looked at the mould issues in the bathroom. He said he would return the next day to collect the rent. He did not return for the rent cheque but phoned the tenant to tell her that the landlord would not expect more then the \$100.00 deduction and they were to expect an eviction notice. The tenant testifies that she put the rent cheque in the landlords' mailbox for \$1,000.00 on the same day. The property manager called back to tell the tenants that there was some miscommunication and the landlord wanted the tenants to sign a six month lease and then they would get the \$100.00 rent reduction over that time. The tenants confirm they paid \$1,100.00 for July's rent and \$1,000.00 for August rent as per the verbal agreement with the landlords agent. The landlord served the tenants with a One Month Notice to End Tenancy for cause on August 13, 2009 with a date to vacate the unit on September 30, 2009. The tenants filed there application to dispute this notice on August 21, 2009.

The tenants paid \$1,000.00 for September and October's rent and on September 02 and October 06, 2009 they received a 10 Day Notice to End tenancy for unpaid rent. The tenants

Residential Tenancy Branch
Ministry of Housing and Social Development

dispute that they owe the landlord any rent as they had an agreement to deduct \$100.00 per month with the property manager who now states they must sign a six month lease in order to get this. as the tenants were not told this when they entered into the tenancy they do not want a six month lease for this rental unit.

The landlord testifies that the tenants were served the One Month Notice for cause due to the tenants' husband having significantly interfered with and unreasonably disturbed another occupant or the landlord and seriously jeopardizing the health, safety or lawful right of another occupant or the landlord. The landlord claims the tenants' husband has sworn at her and called her names. He has disturbed neighbours in a women's shelter who had to call the police. The landlord claims the tenant removed a stove from the unit and left it on the back deck. He has threatened the property manager and been abusive to his staff. The landlord claims that he makes her feel uncomfortable when she collects her mail or sits on her deck.

The tenant disputes the landlords testimony she states her husband asked someone in the women's shelter to pick up garbage which was left out and smelling. An argument ensued and the police were called but no charges or actions were brought by the police. The tenant claims that they put some locks on the back gate to prevent transients coming onto the property at night. The landlord came round and started yelling and swearing at her husband telling them they could not lock the gates and impede her access. The tenant claims that when the landlord is sitting on her deck they are often on their own deck and her husband does not stare at the landlord. The tenant confirmed that her husband did remove the stove for the landlord as it was not working and this has now been removed when the new stove arrived.

The tenant testifies that the landlord enters their yard or unit without prior notice to do so and they request an order for the landlord to comply with the act and give them 24 hours written notice to enter the property included in their rent. The tenant also requests the landlord make repairs as agreed on when they viewed the property at the outset of the tenancy. These repairs include the mould in the bathroom; repair to a dripping kitchen faucet and to repair the door screens.

Analysis

In dealing with the tenants application to cancel the notice to end tenancy I find the landlord has not proven sufficient or significant grounds to end the tenancy. Therefore, the One Month Notice dated August 13, 2009 is cancelled. The Notice has no force or effect and the tenancy will continue.

I also find the tenants were told by the property manager that they could reduce their rent by \$100.00 per month. As this was a verbal agreement between them and the property manager was acting on behalf of the landlord I find in favour of this rent reduction for six months and therefore find the two 10 day notices have no force or effect as no rent was owed at the time they were issued. I strongly suggest the tenants and landlord enter into a new agreement at the end of the six months to determine the amount of rent due for this unit and to determine what the rent entails in so far as yard work carried out by the tenants.

I find the landlord has not given the tenants the minimum of 24 hours written notice before she enters the property pursuant to s. 29 of the Act. The tenants have agreed however the landlord may post a notice to enter on their front door. I find the landlord has not carried out the repairs to the unit. The *Residential Tenancy Act* s. 32 states;

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated August 13, 2009 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the notice, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and payable to the landlord.

I Order the landlord to comply with the Act before entering any portion of the rental property with the exception of making emergency repairs pursuant to s. 33 of the Act.

I further Order the landlord to address the repairs in the rental unit within one month of today date. Namely the repairs required to remove the mould in the bathroom, to repair the kitchen faucet and to repair the screen doors pursuant to s.32 of the Act.

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: October 15, 2009.

Dispute Resolution Officer