

Decision

Dispute Codes: CNC, RP, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order that the landlord perform repairs. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?
Should the landlord be ordered to perform repairs?

Background and Evidence

The tenancy began on April 1, 2009 and was at that time managed by an agent of the landlord. The parties completed a condition inspection report at the outset of the tenancy. In or about September 2009 the landlord assumed management of the rental unit.

The parties agreed that on September 17 the landlord served on the tenant a one month notice to end tenancy for cause (the "Notice"). The sole cause listed on the notice is that the "property is going to be listed for sale after 30 days." The landlord testified that she has many reasons for ending the tenancy, including an alleged threat on her life by the tenant.

The tenant testified that the rental unit is in need of repairs. On August 18, 2009 the tenant wrote to the landlord enclosing the following list of repairs:

1. Electrical circuit breaker repaired or replaced
2. Stove fixed
3. Laundry machine and dryer repaired or replaced
4. Smoke detectors installed
5. Electrical outlets fixed in downstairs suite
6. Downstairs bathroom tub and shower repaired
7. Security locks for double door front entrance
8. Railing and hand rail for rear deck

The tenant testified that the stove and washer and dryer have been repaired since the

landlord received the letter but the other items remain outstanding. The tenant testified that the breakers continually trip and that electrical wires are exposed throughout the unit. The tenant provided photographs of exposed wires. The condition inspection report completed at the outset of the tenancy notes that wires are exposed in two areas. The tenant testified that the house is wired for smoke detectors, but that the detectors did not function so the tenant had to purchase a battery operated smoke detector. The tenant testified that the tub surround for the bathtub on the lower floor was pulling away from the wall, was not properly sealed and mould behind the surround would fall into the bathtub. The tenant provided photographs of the tub surround. The tenant testified that the front door entrance deadbolt was ineffective and one could open the door merely by pushing on the door when it was deadbolted. The tenant thought he had provided photographs of the door, but they were not part of the evidence package received at this office. The tenant indicated that the door was not a major issue in his mind in any event. The tenant testified that the stairs leading from the rear balcony to the ground did not have a handrail and provided a photograph of the stairs.

The landlord insisted that the tenant was lying and argued that the unit was in the same condition as when he initially rented it, so the tenant must have been satisfied at that time. The landlord testified that her relatives have been to the rental unit to work on the electrical system and stated that if there were exposed wires, the tenants must have exposed them.

Analysis

The Act identifies specific circumstances under which a landlord may end a tenancy. The landlord's desire to sell the rental unit is not grounds for ending the tenancy under the Act and I order that the Notice be set aside. As a result, the tenancy will continue.

Sections 32(1) and (5) of the Act provide as follows:

- 32(1) A landlord must provide and maintain residential property in a state of decoration and repair that
 - 32(1)(a) complies with the health, safety and housing standards required by law, and
 - 32(1)(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

- 32(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that even though the tenants were aware that there were outstanding repair issues when the tenancy began, this does not relieve the landlord of the obligation to maintain the home in a manner that makes it suitable for occupation. I find that the tenants have proven that some repairs are required. I find it appropriate to order that an electrical inspection take place. The condition inspection report that was completed at the time the rental unit was occupied indicates that there were exposed electrical wires at that time. I do not accept that the tenants caused the exposure of those wires and I accept that the tenants have cause for concern that the electrical system may be unsafe. **I order that the landlord retain the services of a certified or journeyman electrician to inspect the wiring and electrical system in order to ensure that the rental unit is reasonably safe for occupation. I order the landlord to obtain from the electrician a written report of his findings and to provide a copy of this report to the tenant. The electrical inspection must take place no later than December 11, 2009. If the electrician's report indicates that work is required in order to ensure that the unit is safe to occupy, I order that the landlord have that work professionally completed no later than January 31, 2010.**

I find that the tub surround is not properly sealed and that it likely has mould behind it. I find the tenants' evidence, which included photographs, to be persuasive despite the landlord's insistence that he was lying. **I order the landlord to remove the tub surround, clean the area and remove any mould that may be present and install a new tub surround which is to be properly caulked and sealed. This work must be completed no later than December 11, 2009.** While I have not ordered that a professional installation take place, the landlord is reminded that if the installation is not properly completed, the tenant may make an application for further repairs.

I find that the absence of a hand railing on the back stairs poses a safety hazard and **I order the landlord to install a hand railing on the stairs no later than December 11, 2009.**

I dismiss the claim for an order for the landlord repair the wiring for the smoke detector as I find that the battery-operated smoke detector is sufficient as well as the claim for

the landlord to repair the door lock as I find the tenant has not proven that the lock is not functional.

Should the landlord fail to perform the repairs which have been ordered, the tenants have liberty to make a further application for dispute resolution for a rent reduction until such time as the repairs are completed.

As the tenants have been substantially successful in their application, I find that they are entitled to recover the \$50.00 filing fee paid to bring the application. The tenants may deduct \$50.00 from future rent owed to the landlord.

Conclusion

The landlord has been ordered to make repairs. The tenant may deduct \$50.00 from future rent owed to the landlord.

Dated November 10, 2009.