



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, RR, OPC, FF

Introduction

This was a cross-application hearing.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me. I have considered all of the admitted evidence and testimony provided.

Preliminary Matter

The landlord testified that the tenant's evidence was received one week ago and that they have had time to review the evidence. The tenant stated he did not receive all of the landlord's evidence. I determined that the tenancy agreement submitted by the landlord would be referenced as the tenant has a copy of the agreement. The balance of the landlord's evidence was not considered but the landlord was at liberty to provide oral testimony referencing the evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession based upon a One Month Notice to End Tenancy for Cause issued on October 31, 2009?

Is the tenant entitled to rent reduction for repairs, services or facilities agreed upon but not provided?

Is either party entitled to filing fee costs?

Background and Evidence

The parties agree that this tenancy commenced in March 2007 and rent is \$7,500.00 per month. A deposit in the sum of \$7,500.00 was paid on March 9, 2007.

The tenant testified that due to on-going showings of the rental unit his rent was reduced to \$6,000.00 per month several years ago. The landlord testified that the rent was reduced in January 2009 and that this was a temporary agreement to compensate for interruptions due to real estate showings. The rental unit is not currently listed for sale and the tenant has continued to pay \$6,000.00 per month.

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause issued on October 31, 2009 was served on the tenant indicating that the tenant was required to vacate the rental unit on November 30, 2009. The reasons stated for the Notice to End Tenancy were that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has put the landlord's property at significant risk.

The parties agreed that on August 10, 2009 a flood occurred in the rental unit which was accepted by the strata as no fault of the landlord or tenant. The strata insurance company hired construction a company to complete the required repairs. The parties agreed that the tenant was provided with a one-time rent abatement of \$1,000.00 in recognition of the inconvenience the flood has caused.

The landlord presented the following evidence and arguments to support the Notice to End Tenancy for Cause:

- That the tenant has refused to cooperate with workers who must access the rental suite so that repairs may be completed.
- That at the end of October the tenant had a telephone conversation with an employee who was attempting to arrange repairs and that he swore at her, was uncooperative and rude.
- That the tenant is refusing to cooperate by allowing his furniture and belongings to be moved so that repairs may be made.
- That extensive remediation is required to the rental unit and the tenant has a vested interest in not cooperating.
- That the tenant has refused on two occasions, despite being given written notice, to allow workers into the rental unit.

The tenant presented the following evidence and arguments in support the application to cancel the Notice to End Tenancy for Cause:

- That immediately following the flood he gave the strata maintenance worker free access to the rental unit and that he only expected a telephone call to alert him to the entry.

- That on one occasion the maintenance worker did enter for a pre-arranged access but that one hour later he returned, unannounced, with a group of people who were asked by the tenant to return later that day.
- That he has never received any written notice of entry and has always cooperated with the landlord's need to enter the unit.
- That he has not been provided with appropriate compensation for the loss of use of almost one half of the downstairs portion of the rental unit.
- That the rental unit floor is now in an extremely dangerous condition which could lead to a cut and possible amputation of a limb due to a medical condition the tenant suffers.
- That he agrees he was "excited" when he spoke with the employee who was attempting to arrange repairs and that he denies swearing at her.
- That he was not provided any warning that the tenancy could end.

The landlord could not provide dates that the tenant had been given advance written notice of entry by the landlord or workers. The landlord stated that on two occasions, in the presence of a concierge, a notice was posted to the door of the rental unit providing a date and time of entry as required by the Act. The tenant testified that he has never received a written notice of entry. The landlord testified that on both occasions they requested entry in writing the tenant refused to allow workers into the unit.

The landlord testified that in the past they were able to rely upon telephone contact with the tenant to make arrangements related to the rental unit. The landlord testified that the tenant has now become rude to the point that workers are refusing to enter the unit or move the furniture. The landlord stated they are afraid the tenant will accuse them of damaging his goods and that the tenant is now placing the property at risk due to the insinuation of liability from possible injury.

The tenant stated that the landlord may move his belongings and that he is willing to sign a waiver releasing the landlord from any liability in the case of possible damages to his property.

Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the tenant has placed the landlord's property at significant risk. In reaching this conclusion I considered the following factors:

- There is no evidence before me that the tenant has caused any damage to the rental unit that would place the property at significant risk. The tenant and

landlord are experiencing conflict, but I find that this has not placed the property at risk.

- The absence of evidence of written notices to enter the rental unit. The landlord provided testimony that on two occasions written notice was posted; the tenant has denied ever receiving written notices. In the absence of any evidence of these notices I find that the notice of entry has not been sufficient.
- The landlord has not provided any evidence of instructions given to the tenant in relation to access by workers or warning that further rude or belligerent behaviour could place the tenancy in jeopardy. The first written communication was the Notice to End Tenancy issued October 31, 2009.

The tenant has raised the specter of liability in relation to the state of the rental unit and, supported by the tenant's own admission that he can become excited, what was once a good relationship between the parties has now deteriorated to the point where they should consider communication in writing only. I find that the tenant's suggestion the landlord could be liable for future damages do not place the landlord's property at risk, although the prospect of a tenant anticipating a claim would be disturbing.

The tenant must cooperate with the landlord's right to make repairs and if those repairs are so extensive so as to require vacant possession then the landlord is at liberty to issue a Notice to End Tenancy for landlord's use of property. The tenant is at liberty to dispute any such notice.

The tenant must accept this decision as a warning that the landlord is entitled to reasonable access to the rental unit in order to complete the required repairs in a timely manner. Failure to cooperate with reasonable access or any incident of further abuse, intimidation of workers and/or the landlord or attempt to thwart the landlord in preparing the unit for repair and the completion of repairs could form reason for this tenancy to end for cause, as the landlord has a lawful right to complete repairs and must not have this lawful right placed in jeopardy.

The tenant has testified that he will not hold the landlord or workers responsible for any damages that may occur during moving of his furniture; therefore as provided by section 62(3) of the Act, I find the landlord is at liberty to move any items that interfere with repairs that must be made. I have made no finding in relation to costs for moving or any required storage fees,

The landlord must provide the tenant with notice of entry as determined by section 29 of the Act, which is appended at the bottom of this decision.

Any matter related to temporary accommodation for the tenant during a period of restoration is not before me and it appears that the tenant's request for rent abatement indicates the tenant's willingness to remain in the rental unit during construction.

I find that the tenant is currently receiving a rent reduction in the sum of \$1,500.00 which was to compensate for disruptions caused by real estate showings. The tenancy agreement includes monthly rental in the sum of \$7,500.00 and there is no evidence before me that the parties have signed a new tenancy agreement reducing the rent. Therefore, I find that the tenant is entitled to rent abatement in the sum of \$1,500.00 per month, and that he will continue to pay \$6,000.00 per month until the repairs are completed. Once the renovations are completed the tenant must immediately revert to paying \$7,500.00 per month. Any portion of a month will be reduced by \$32.88 per day.

If the parties cannot agree on a repair completion date the landlord is at liberty to submit an application for dispute resolution requesting an Order that the rent abatement cease. If at that hearing it is found that repairs have been completed and the tenant did not cease the abatement, the landlord will be entitled to reimbursement, retroactive to the decided repair date.

Conclusion

As I have determined that the landlord had submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(2)(d)(i) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated October 31, 2009, and I order that this tenancy continue until it is ended in accordance with the Act.

I find that neither party is entitled to filing fee costs.

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: December 15, 2009.

Dispute Resolution Officer

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).