



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNC, CNR, FF

Introduction

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, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

During this hearing some difficulties were encountered with the teleconference system. The tenant had difficulty entering the hearing and twelve minutes into the hearing the landlord was disconnected. No testimony was accepted during any period where one of the parties was not present.

Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy issued on January 28, 2010 be cancelled?

Should the 10 Day Notice to End Tenancy issued on February 3, 2010 be cancelled?

Is the tenant entitled to filing fees?

Background and Evidence

The landlord and the tenant agree that a 1 Month Notice to End Tenancy for Cause was served to the tenant indicating reasons that the tenant has put the landlord's property at significant risk and that the tenant has breached a material term of the tenancy that was not corrected within a reasonable time after written notice was given to do so.

The parties agreed to the following facts:

- The tenancy agreement was signed on December 31, 2009 for a fixed term to December 31, 2010;
- That a 7 page addendum was attached to the tenancy agreement; that the addendum was initialed by each party;
- That the addendum contained a list of detailed renovations to be completed by the tenant;
- A rent payment schedule that determined rent owed each month was included in the addendum;
- That the rent schedule is entitled "proposal for lease of premises for a term of three (3) years;) and
- That rent owed in January 2010 was zero, February \$100.00, March \$100.00; with rent increasing during the term of the tenancy until \$1,000.00 is to be paid for December 2010, rent.

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

- That the tenant has failed to repair a floor which is in a state that could result in flooding to the lower level of the building;
- That on January 24, 2010 the landlord gave the tenant a letter directing him to complete the renovations to the suite by the end of January;
- That the landlord issued the tenant a letter on January 30, 2010, regarding the breach of the tenancy agreement, declaring the rent payment schedule void due to a breach of the terms of the tenancy agreement;
- That the tenant had not completed agreed upon renovations to the rental unit that were to be finished by January 31, 2010;
- That the tenant set the terms of the tenancy agreement and the landlord did not have a clear understanding of the terms of tenancy agreements.

The landlord issued the 10 Day Notice to End Tenancy as the tenant paid \$100.00 rent for February and the landlord expected a payment in the sum of \$1,000.00. The tenant disputed this Notice within the required time-frame.

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

- That he did agree to complete renovations to the rental unit;
- That the agreement does not include a schedule of work to be completed;
- That by the end of the tenancy term (December 2010) all of the agreed upon renovations will be completed;
- That rent owed was based upon the understanding that renovation work would take some time to complete;

- That the landlord was aware of deficiencies with the plumbing at the start of the tenancy and that repairs to the plumbing should have been made by the landlord prior to the start of the tenancy;
- That prior to the start of this tenancy the landlord was aware of a potential for risk of flooding should the plumbing fail.

The parties agree that the tenant paid \$100.00 rent due on February 1, 2010.

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 placed the landlord's property at significant risk or breached a material term of the tenancy. In reaching this conclusion I considered the following factors:

- The absence of any schedule of renovation work to be completed contained within the tenancy agreement signed between the parties;
- The absence of any evidence that the tenant has put the landlord's property at significant risk as the claim is made in the belief that a flood may occur at some point in the future;
- That the written notice of the breach of the material term of the tenancy refers to a term that is not contained within the tenancy agreement signed between the parties.

I also find that the 10 Day Notice to End Tenancy for unpaid rent issued on February 2, 2010, is of no force or effect as the tenant has paid rent as required by the addendum signed between the parties on December 31, 2010. Further; section 14 of the Act permits changes to terms of a tenancy agreement, outside of standard terms that are defined in the Act, only if both the landlord and tenant agree to an amendment. There is no evidence before me that the terms of the tenancy agreement were changed by mutual agreement. Therefore, I have relied upon the tenancy agreement submitted as evidence, which does not contain any agreed upon renovation completion date. During the hearing the tenant acknowledged that the renovations will be completed, as set out in the tenancy agreement, before the end of the tenancy.

I also note that plumbing is not contained in the agreed upon renovations to be completed by the tenant.

Therefore, the Notices issued on January 28, 2010 and February 3, 2010, are of no force or effect and the tenancy will continue.

As the tenant's Application has merit I find that the tenant is entitled to filing fee costs and may deduct \$50.00 from the next month's rent that is due.

Conclusion

As I have determined that the landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(d)(h) and 46(1) of the Act, I hereby set aside the One Month Notice to End Tenancy, dated January 28, 2010, and the 10 Day Notice to End Tenancy for Unpaid rent issued on February 3, 2010, and I order that this tenancy continue until it is ended in accordance with the Act.

The tenant may deduct filing fee costs in the sum of \$50.00 from the next month's rent due.

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: March 24, 2010.

Dispute Resolution Officer