

DECISION

Dispute Codes CNC, OLC, RP

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to cancel a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the unit.

The parties both appeared, gave affirmed evidence, and were given the opportunity to cross examine each other on their evidence.

Jurisdiction

At the outset of the hearing, the landlord questioned whether or not the *Residential Tenancy Act* applies, and whether or not the Residential Tenancy Branch has jurisdiction because the units do not have their own kitchens or bathrooms. The rented unit is a room on the 2nd floor in a 100 year old house, which contains 3 additional rented rooms. Tenants do not share the kitchen or bathroom with the owner or the landlord, but do share with each other.

The *Residential Tenancy Act*, at Section 4 states that this *Act* does not apply to:

4 (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

I therefore find that the Residential Tenancy Branch has jurisdiction and the *Residential Tenancy Act* applies.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy for cause?

Is the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement justified?

Is the tenant's application for an order that the landlord make repairs to the unit justified?

Background and Evidence

This month-to-month tenancy began on April 1, 2005. Rent in the amount of \$390.00 per month is payable on the 1st of each month, and there are no rental arrears.

The tenant testified that in July, 2009, the landlord tried to evict her with a note that he had written. She further testified that the landlord had increased the rent on notice to the tenant, and she paid, but told the landlord that repairs to her unit were required. She said the landlord blew up at her and served her with the eviction notice. She then attempted to pay rent by cash on July 1, 2009, but the landlord refused to give her a receipt, so she refused to pay the rent. The tenant purchased a money order on July 2, and then paid the rent with that money order.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause dated February 23, 2010, stating that the tenant is expected to vacate the unit on April 1, 2010 and 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. The tenant testified that she did not know until she received the landlord's evidence package related to this hearing what disturbance was caused or when, and testified that this notice has different reasons for ending the tenancy than the one issued in July, 2009.

The parties both gave evidence of tenants having personality conflicts that resulted in raising their voices, and the tenant testified that she feels the landlord puts the blame on her and other tenants rather than the tenant she feels caused the problems. She also testified that the landlord had a lot of stress; he's an elderly man and had to deal with a break-in as well as the death of a tenant, and she feels he wants her to move out because she had requested repairs to the cracks in the ceiling of her room.

The witness assisting the landlord stated that the landlord does most of the repairs to the house, and takes pride in the work he does. He was offended by her complaints about the toilet not working and other repairs he completed, and as a result, he does not like her anymore.

The tenant provided photographs of the cracked ceiling in her room in advance of the hearing. The photographs show lines on the ceiling that may be cracks, but are painted over in a clean, white paint. No visible open cracks appear in the photos.

The tenant also testified that police were called due to alleged thefts of medication and food from her room. She further testified that the landlord would leave keys for the rooms on the counter. The locks were changed as a result, and the landlord testified that keys are kept in a safe place.

The landlord further testified that at least one person has moved out because of interactions with this tenant, and 2 or more perspective tenants didn't move in because negative comments that she made to them. The tenant stated that she did mention to one perspective tenant that she appeared to be too young to live in that type of boarding house, and that she wouldn't fit in. She also requested that the cracked ceiling in her room be repaired; that it's allowing moisture to enter and she admitted that she brought it to the landlord's attention in the presence of the perspective tenant but that was 3 years ago. The landlord also testified that 2 more tenants have stated they're moving because she's annoying them, accusing them of being in her room, and the landlord does not believe that. No evidence, such as notices to vacate from those tenants was provided.

The landlord testified that the tenant leaves her windows open almost all the time, and the floors are not insulated. The landlord lives on the lower level of the house, and is cold. The tenant testified that the heat goes upstairs, and sometimes she has to leave her door open because that is her only source of heat.

The landlord stated that it's his home, and he should have the right to ask tenants to leave if they bother him or other tenants. He has been renting the rooms out for many years.

The tenant testified that she hopes to move into a 55+ accommodation, but she won't turn 55 until January, 2011.

Analysis

The parties have testified that this house is 100 years old. The photographs of the ceiling in the tenant's room do not justify taking the room apart to replace the gyprock. If I were to order the repairs to the ceiling, the tenant would have to move out while the repairs were completed, and I find that there is insufficient evidence to warrant such an extravagant repair.

Having found that the *Residential Tenancy Act* applies to this residence, I must rely on the *Act* and the Residential Tenancy Policy Guidelines. The landlord rents rooms to tenants, and must, therefore, comply with the *Act* as it relates to tenants. The landlord cannot evict a tenant because he no longer likes her. It may very well be that the tenant has caused concern for other perspective tenants, however, the evidence of that is 3 years ago. It may very well be that this tenant is not popular with other tenants or with the landlord however, she is also a tenant and has a right to quiet enjoyment. The tenant also has an obligation to allow other tenants their right to quiet enjoyment.

The Residential Tenancy Policy Guideline regarding the right to quiet enjoyment states that the landlord does not have a reciprocal right to quiet enjoyment, and that every tenancy agreement contains an implied covenant of quiet enjoyment. The landlord does have the obligation to provide the right to quiet enjoyment to other tenants, and inaction by the landlord that permits or allows physical interference by a source that is within the landlord's power to control may form a basis for a claim of a breach of the covenant of quiet enjoyment for other tenants. Quiet enjoyment includes, but is not limited to:

- reasonable privacy,

- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Whether or not the tenant has significantly interfered with the right to quiet enjoyment for other tenants is the question that the landlord must satisfy in order to justify issuing the notice to end tenancy.

I do find, in the circumstances that there have been some personality conflicts among tenants, however, the evidence before me that this tenant has caused other perspective tenants to decide not to move in is very dated. Recent situations have not been brought to my attention. I have heard evidence that the landlord is offended when asked to make repairs because he prides himself in completing such repairs himself. Those requests have offended the landlord and have, therefore caused him to dislike this tenant.

The landlord is a landlord for the purposes of the *Act*, and as such has an obligation to comply with the *Residential Tenancy Act*, and unless it can be proven that the tenant has caused another tenant to lose their right to quiet enjoyment, or some other cause, the landlord cannot issue a notice to end tenancy. The landlord is not permitted to end a tenancy because he doesn't like the tenant, and the notion that he should be permitted to have anyone he wants live in his house, does not satisfy the requirements of the legislation.

Conclusion

For the reasons set out above, the tenant's application to repair the ceiling in the tenant's room is hereby dismissed.

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is hereby allowed, and the notice to end tenancy is hereby cancelled.

I order that both parties comply with the *Act*, and particularly to respect each other's space and right to quiet enjoyment. The tenant is ordered to stay away from the landlord when showing other rooms to perspective tenants.

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: April 26, 2010.

Dispute Resolution Officer