



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MT, CNL, OLC, ERP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for more time to apply to cancel a notice to end tenancy, to cancel a notice to end tenancy; for an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to make emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant only. The landlords did not attend.

The tenant submitted documentary evidence that on July 20, 2010 the tenant served the landlord with the notice of hearing documents for this hearing via registered mail. I accept the landlords have been sufficiently served with notice of this hearing.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to more time to apply to cancel a notice to end tenancy; to cancel a 2 Month Notice to End Tenancy for Landlord's Use; to an order to have the landlord comply with the *Act*, regulation or tenancy agreement and to make emergency repairs; for all or part of the security deposit and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to sections 32, 33, 49, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in August 2008 as a month to month tenancy with a monthly rent of \$900.00 due on the 1st of the month, a security deposit of \$500.00 was paid prior to August 1, 2008. The tenant noted that the security deposit is \$50.00 more than allowed under the *Act*.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated July 6, 2010 with an effective date of September 6, 2010. The landlord has not checked any reason for the 2 Month Notice.

The tenant provided testimony that almost since she moved in to the rental unit there has been a mould problem in her son's bedroom and that the landlord has failed to do

anything to stop the problem, so the tenant has been cleaning the mould up every so often but the mould continues to return.

The tenant also notes there have been many instances of disturbances from the landlord upstairs and threats from the landlord to restrict access to the yard and other services. At this time, the tenant acknowledges that nothing has specifically been restricted.

Analysis

Section 49 allows the landlord to end a tenancy for the landlord's use of the property by issuing a notice that complies with Section 52 of the *Act*. Section 52 requires that the notice state the grounds for ending the tenancy.

As the landlords failed to provide the reasons in their notice to end tenancy, I find the 2 Month Notice to End Tenancy for Landlord's Use to be invalid and ineffective.

Section 32 requires a landlord to provide and maintain a rental property in a state of decoration and repair that complies with health, safety and housing standards required by law and having regard for the age, character and location of the rental unit makes it suitable for occupation by a tenant.

By the landlords' refusal to investigate the causes of the mould in the son's closet I find the landlord is not in compliance with Section 32 and order the landlord to have the entire rental unit assessed and repaired by a qualified mould abatement specialist to determine the appropriate method to rid the rental unit of any current and potential mould problems no later than December 31, 2010.

Section 19 of the *Act* stipulates that a landlord must not require a security deposit in an amount that is more than $\frac{1}{2}$ of one month's rent. The section goes on to say that should a landlord accept a security deposit in excess of this amount the tenant may deduct the overpayment from rent.

Based on the tenant's testimony and in the absence of any contradictory evidence or testimony from the landlords I accept the tenant paid \$50.00 over the allowable amount for a security deposit.

I remind the landlords that they are required under Section 28 of the *Act* to ensure the tenants are allowed quiet enjoyment of the rental unit which includes reasonable privacy; freedom from unreasonable disturbances and the use of common areas free from significant interference.

Conclusion

For the reasons noted above I cancel the 2 Month Notice to End Tenancy for Landlord's Use of Rental Property issued on July 6, 2010 and find the tenancy to be in full force and effect.

I note that should the landlord fail to comply with the above order to have the rental unit assessed and repaired by a qualified mould abatement specialist the tenant is at liberty to file an Application for Dispute Resolution seeking a rent reduction and/or any other compensation that may be appropriate.

As I have found the landlord has accepted a security deposit greater than allowed I order that the tenant may deduct from her next rent payment \$50.00 to recover the overpayment. In addition, because the tenant was successful in her application I order that she is entitled to recover the \$50.00 filing fee for this hearing and order that she may deduct this additional amount from her next rent payment.

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: September 09, 2010.

Dispute Resolution Officer