



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute codes

For the Tenant CNC, MNDC, OLC, RP, RR, FF

For the Landlord OPC, FF

Introduction

This hearing was convened in response to an application by the tenant filed on October 04, 2010 to set aside or cancel a 1 Month Notice to End Tenancy for Cause (Notice to End) dated July 23, 2010; and, an application by the landlord filed on May 18, 2010 for an Order of Possession in respect to the same Notice to End. Both parties applied for recovery of the filing fee for their respective applications.

The tenant further applied for the landlord to make repairs to the unit, and for rent abatement for loss under the Act, Regulation or Tenancy Agreement, and to allow the tenant to reduce the rent for facilities agreed upon but not provided.

Both applicants attended the conference call hearing and were permitted to make submissions, ask questions, present witnesses and provide testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The Notice to End purportedly issued by the landlord was dated July 23, 2010 for the reasons:

Tenant is repeatedly late paying rent.

Tenant has assigned or sublet the rental unit/ site without landlord's consent.

In this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons, and that at least one reason must constitute sufficient cause for the Notice to be valid. The landlord is not required to prove all reasons stipulated for ending the tenancy.

Issue(s) to be decided

Is there *sufficient* cause to end the tenancy?

Should the Notice to End be cancelled?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the monetary amounts claimed?

Should the landlord be ordered to make repairs to the unit?

Should the tenant be allowed to reduce the rent for repairs, services or facilities agreed upon but not provided?

Background and evidence

This tenancy began March 2009. Rent is \$1275 per month.

The landlord's and tenant's undisputed relevant testimony is that the rental unit gas fireplace has not been operational since the outset of the tenancy – March 2009.

The rental unit washing machine has not been operational since March 04, 2010.

The contrasting relevant testimony is as follows:

The landlord testified he issued a Notice to End tenancy for Cause on July 23, 2010. He e-mailed it to his property agent, who subsequently somehow printed it off and posted the 2 page notice on the tenant's door on July 23, 2010. The hearing did not have benefit of testimony from the agent. The tenant testified that he returned home on July 24, 2010 to find 2 blank pieces of paper on his door, with a faint indication of printing at the top of the paper that they were a FAX. He determined the paper was heat- sensitive Fax paper which had been posted on his door exposed to sunlight – and rendering the paper 'sun-bleached' and illegible. The tenant testified that in the absence of the information he determined if urgent he would otherwise be notified. The landlord testified that it was conceivable that the paper used for the Notice to End was heat sensitive Fax paper. None the less it is agreed that the Notice to End was a copy.

The tenant further testified that his understanding of the non-operational fireplace was that it would be fixed before the first fall season. The landlord testified he made attempt to repair the fireplace, but determined that the cost was prohibitive and did not repair it. The tenant seeks rent abatement of \$125 per month for the non-functioning fireplace.

The landlord acknowledges receiving from the tenant that the washing machine was not functional in March of 2010, but determined that as the tenant was not paying rent on time he would not repair the washing machine. The tenant seeks rent abatement of \$100 per month for the non-functioning washing machine.

The landlord provided a copy of the tenancy agreement indicating that the washing machine was part of rent payable. The tenant argued that the fireplace was not stipulated in the tenancy agreement but that it is not decorative, and that he reasonably expected the fireplace to operate as intended.

Analysis

On the preponderance of the evidence and the testimony of both parties, and on the balance of probabilities, I prefer the tenant's evidence in respect to the Notice to End, and find the tenant was not properly served with the Notice.

Section 52 of the Residential Tenancy Act (the Act) states as follows:

Form and content of notice to end tenancy

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

I find the tenant was not given the landlord's Notice to End in the proper form and content required for it to be an effective Notice to End. As a result, I accept the tenant's request to set aside the landlord's Notice, and I will so Order. The application by the landlord is effectively **dismissed** and the landlord's Notice to end is null and of no effect. The tenant has come perilously close to losing his tenancy. The landlord is at liberty, if necessary, to re-issue a valid Notice to End Tenancy for sufficient cause.

Section 32 of the Act, as well as the Regulations, speak to the landlord's obligation to make repairs.

I accept the tenant's claim of rent abatement in respect to the fireplace. I find it reasonable that the tenant is, in part, paying for a functioning fireplace. Therefore, I grant the tenant's request for rent abatement with consideration as to the seasonal value of the fireplace, in the amount of \$35 per month – to October 2010 (20 months) – for a total of **\$700**. As the tenant has requested a rent reduction I decline to order the landlord make the repair. None the less, **I further Order** that as of November 01, 2010, the rent will be \$35 less than the rent payable under the tenancy agreement until such

time as the landlord, in his discretion, determines to repair the fireplace, **and** makes application for dispute resolution to end the rent reduction and reinstate the rent to its original amount. The landlord must provide proof the repair has been achieved, and the tenant cannot unreasonably deny the landlord the obligation to make the necessary repairs.

I accept the tenant's claim of rent abatement in respect to the washing machine. I find it is part of the amenities for which rent is payable under the tenancy agreement. I grant the tenant's rent abatement in the amount of \$60 per month – to October 2010 (8 months) – for a total of **\$480**. As the tenant has requested a rent reduction I decline to order the landlord make the repair. None the less, **I further Order** that as of November 01, 2010, the rent will be \$60 less than the rent payable under the tenancy agreement until such time as the landlord, in his discretion, determines to repair the washing machine, **and** makes application for dispute resolution to end the rent reduction and reinstate the rent to its original amount. The landlord must provide proof the repair has been achieved, and the tenant cannot unreasonably deny the landlord the obligation to make the necessary repairs.

As the tenant was successful in their application, the tenant is granted recovery of their filing fee in the amount of **\$50**. The tenant's sum of entitlements is for **\$1230**.

Conclusion

The landlord's application is **dismissed**, without leave to reapply. The tenancy continues.

I Order the tenant may deduct **\$1230** from a future rent.

I Order that as of November 01, 2010 the tenant may reduce the rent by \$35 and \$60 – to a maximum of **\$95 per month**, until such time as the landlord makes application for Dispute Resolution to reinstate the rent, as applicable.

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*.
