



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause dated September 23, 2010, for compensation for damage or loss under the Act or tenancy agreement and for an Order that the Landlords comply with the Act.

RTB Rule of Procedure 2.3 states that “if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply.” I find that the Tenant’s application for compensation for damage or loss (ie. for compensation for a damaged pair of trousers and for “pain and suffering”) is unrelated to her application to cancel the One Month Notice. Furthermore as there was insufficient time during the hearing to deal with all of the issues, the Tenant’s application for compensation is dismissed with leave to reapply.

Issues(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on August 1, 2009. Prior to this time, the Tenant resided in another suite in the rental property. On September 23, 2010, the Landlord (T.R.C.) served the Tenant in person with a One Month Notice to End Tenancy for Cause dated September 23, 2010. The ground indicated on the Notice was that “the Tenant or a person permitted on the property by the Tenant has put the landlord’s property at significant risk.” Later that same day, the Landlord served the Tenant (by putting it under the door of the rental unit) with a second One Month Notice dated September 23, 2010 which included another ground.

The Landlords claim that on or about August 9, 2010 while doing repairs to an overflow valve in the Tenant’s bathroom, they discovered missing tiles in the shower surround and advised the Tenant that the surround would have to be repaired. The Landlords said that the Tenant was given a written notice that they would be entering the rental

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unit on Sunday, August 15, 2010 to make repairs and that they would take approximately 3 – 4 days. The Landlord (T.R.C.) said the Tenant would not grant entry that day however the Tenant claimed that T.R.C. agreed to come back on August 23, 2010 instead because it was very hot that week and the Tenant wanted to have the use of her shower. The Landlord said that when she arrived on the 23rd at the pre-arranged time, the Tenant was in the bathtub so she told the Tenant she would return and when she returned 15 minutes later the Tenant was still in the bath so she left and did not return that day.

Consequently, the Landlord (T.R.C.) said she gave the Tenant another 24 Hour Notice on September 10th advising her that she would be attending the rental unit on Sunday, September 12, 2010 to start the repairs. However, the Landlord said the Tenant objected to the work being done on the weekend as she claimed that she had nowhere to go while the work was being done. The Landlord said that on September 17th she offered to move the Tenant (permanently) to a vacant suite in the rental property but the Tenant would not agree. The Landlord said she gave the Tenant another 24 Hour written Notice on September 22nd advising the Tenant that she would attend the rental unit on Friday, September 24th, Saturday September 25th and Sunday September 26th to do the repairs and that if she did not comply, the Landlord serve her with a One Month Notice.

The Landlord (T.R.C.) said the Tenant responded in writing suggesting that the Landlord do the repairs while she was away from October 7 – 12, 2010 but then did not go away for that period of time. The Landlord said the Tenant had earlier alleged that equipment stored in her suite for the repairs (which contained construction dust) was aggravating her allergies and she suggested that the Landlord would be liable if she got sick because of the construction dust. Consequently, the Landlord claimed that she believed the Tenant was unreasonably preventing the Landlords from doing necessary repairs.

The Landlords said when the overflow valve was repaired on August 9, 2010 a pipe was accidentally damaged and approximately 2 weeks later, water leaked through the ceiling of a commercial establishment below. The Landlords admitted that they had to enter the Tenant's suite on August 17, 2010 due to this emergency to repair the pipe. At this time, the Landlords claimed that they discovered that the Tenant had blocked off part of the overflow. The Landlords said they are concerned about further leaks into the commercial area because the damaged tile area has only been temporarily sealed with silicon.

The Tenant argued that she was not unreasonably restricting the Landlords from making the repairs to the tiles in the shower. The Tenant claimed that she had nowhere to go on weekends when repairs were proposed therefore she asked the

Landlords to make the repairs during the week days but they refused. The Tenant said that it was only after September 11, 2010 when she removed some equipment left in the rental unit that she believed that the construction dust on it had contributed to her allergies. Consequently, the Tenant said she sent the Landlords a letter advising them of her concerns. The Tenant said she did not agree to move to another suite proposed by the Landlords because it was in very poor condition. The Tenant claimed that she can reside in the rental unit while repairs are being done provided that the Landlords pay for her allergy medications.

The Tenant also claimed that she can vacate the rental unit for 3-4 days if the Landlords compensate her for a trip she cancelled to go to California from October 7 – 12. The Tenant said she cancelled this trip once she received the One Month Notice(s) because of the stress and the need to prepare to dispute it.

Analysis

I find that the One Month Notice served by putting it under the door of the rental unit (containing 2 grounds) was not served in a manner required under s. 88 of the Act and therefore it is unenforceable. However, I find that the One Month Notice served in person on the Tenant on September 23, 2010 (containing one ground) was properly served.

The Landlords claim that they are not available to make the needed repairs from Tuesday to Thursday and the Tenant says it is not convenient for her to have the repairs done on weekends because it is a significant interference with her right to quiet enjoyment. The Landlord says that the repairs will take 3 – 4 days and during that time the Tenant would not have the use of the shower but would be able to use the bath. The Landlords argue that if the Tenant intends to hold them liable for any adverse health effects she suffers as a result of the dust from the construction that they may have to obtain vacant possession of the rental unit to make repairs.

I find that there is insufficient evidence to conclude that the Tenant has put the Landlord's property at significant risk by not agreeing to the dates proposed by the Landlords to make repairs. In essence, I find that both parties have been unreasonable in their refusal to attempt to find a compromise position. Furthermore, if the risk of damage to the rental property was as great as the Landlords suggest, then one would reasonably expect that they would make the repairs at the earliest opportunity rather than to leave the repairs undone because they refuse to make the repairs during the week days.



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The Landlords also argued that the Tenant has prevented them from making repairs because she is threatening to hold them liable for adverse health effects associated with the repairs. However I find that this is a reasonable and important matter for both parties to consider before repairs are made and therefore it is not a factor that supports the One Month Notice in this matter. Consequently, the One Month Notice to End Tenancy for Cause dated September 23, 2010 is cancelled and the tenancy will continue.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated September 23, 2010 is cancelled. 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: October 21, 2010.

Dispute Resolution Officer