



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPL, CNL, OLC, ERP, RP, LRE, LAT

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant, seeking an order for repairs and emergency repairs, an order to compel the landlord to follow the Act, an order to permit the tenant to change the locks and an order to suspend or set conditions on the landlord's right to enter the unit. The hearing was also convened to deal with a cross application by the landlord seeking an Order of Possession based on the expiry of the fixed term tenancy and based on the Two-Month Notice to End Tenancy for Landlord's Use dated October 1, 2010. Neither the tenancy agreement nor a copy of the Two-month Notice had been submitted into evidence.

Preliminary Matter

A previous hearing was held on cross applications by the landlord and tenant on November 2, 2010. The tenant had applied for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated October 1, 2010, purporting to be effective December 1, 2010 and a monetary order for repairs and reduced rent. The landlord's application was apparently seeking an Order of Possession based on the One-Month Notice.

At that previous hearing the portion of the tenant's application seeking a monetary order was dismissed. While there was no order issued to grant the tenant's request to cancel the One-Month Notice and no determination was expressly made in the decision in regards to this portion of the tenant's application, it appeared however, that the tenant's request was granted because the landlord's application seeking an Order of Possession

based on the Two-Month Notice was dismissed by the dispute resolution officer. A comment in the introduction portion of the November 2, 2010 decision also referred to a previous decision dated September 14, 2010 which had been interpreted to imply that the tenancy would be ending as of November 30, 2010, evidently the date given for the expiry of the fixed term.

However the decision of September 14, 2010 actually dealt with the tenant's application for a monetary claim, a request for repairs and a request to cancel a Two-Month Notice for Landlord's Use dated August 10, 2010 . A cross application by the landlord sought an order of possession based on the August 10, 2010 Notice. The tenant's monetary claim was dismissed at that time but the tenant's request for repairs to the sinks had been granted. The tenant's request to cancel the August 10, 2010 Two-Month Notice to End Tenancy for landlord's Use was also granted by the dispute resolution officer and the landlord's application for an Order of Possession based on the August 10, 2010 Notice was dismissed without leave in the September 14, 2010 decision. .

Given the above, I find that the matter regarding the landlord's request for an Order of Possession based on the Two-Month Notice for Landlord's Use dated October 1, 2010 was already determined on November 2, 2010. I find that this matter is res judicata and I therefore lack authority to make a determination on this matter and it is not possible for a subsequent decision to be made on this second request by the landlord for an Order of Possession based on the same October 1, 2010 Notice. That being said, I find that I do still have authority to determine whether or not the landlord is entitled to an Order of Possession based on the expiry of the fixed-term tenancy. I found that this matter could be heard and considered.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

1. Is the landlord entitled to an Order of Possession based on the purported expiry date of the fixed term tenancy on November 30, 2010?

2. Is an Order forcing the landlord to comply with the Act, and the previous order to repair the sink warranted?
3. Should the landlord be ordered to clean-up the adjacent storage area and take measures to eradicate vermin?
4. Is the tenant entitled to change the locks and restrict access of the landlord based on alleged intrusions by the landlord?

The burden of proof is on the landlord to establish that there is a fixed-term tenancy that specifically states that the tenant is required to move out at the expiry date. The tenant bears the burden of proof in regards to the remainder of the claims and issues.

Background and Evidence

The landlord testified that the tenant had signed an agreement for a fixed-term tenancy that was to expire on November 30, 2010. The landlord did not submit a copy of the agreement to this file, but stated that a copy had been previously submitted for the last hearing and the landlord had incorrectly presumed that this same evidence would be accessible for the purpose of the hearing today on the subsequent applications.

In any case, the landlord was able to read into testimony the terms of the original tenancy agreement and although it was for a fixed term of not less than one year, the contract did not feature a term specifically stating that the tenant must move out at the end of the fixed term which is required under the Act if a landlord intends to retain the right to terminate the tenancy at the expiry for the fixed term. The landlord's position was that because the previous dispute Resolution Officer had commented in the decision of November 2, 2010 that the tenant would have to move out at the end of the fixed term, this fact would entitle the landlord to receive an order of possession effective on the expiry date of the agreement and the landlord hoped to receive an order of possession ending the tenancy as of that date.

The landlord also stated that, in anticipation of the tenancy ending pursuant to the Two-Month Notice, the tenant's \$650.00 rent for November 2010 had been refunded to the tenant.

The tenant did not agree with the landlord's position in regards to the requirement to vacate at the end of the fixed term.

The tenant stated that his claim for repair of the sinks in the unit was submitted because the landlord had failed to properly repair the sinks as ordered pursuant to the decision of September 14, 2010. The tenant stated that the landlord attended to the repair work long after the 10-day deadline that was ordered and despite these alleged repairs, the basin still leaked. The tenant also complained that before, after and during, the repairs the landlord's actions were intrusive. The tenant stated that the landlord took liberties to inspect the unit and videotaped the tenant and rental premises while the repairs were underway. According to the tenant, this was the reason that he also applied to restrict the landlord's access and to be permitted to change the locks.

The tenant's application also requested that the landlord be ordered to clean up the garage in which the landlord was storing large plastic bags containing fabric, and that the landlord be ordered to hire professional exterminators to rid the premises of an infestation of mice. The tenant stated that he could hear the rodents scurrying around in the walls. The tenant felt that the landlord's failure to place mousetraps in his unit showed that the its lack of interest in eradicating the mice throughout the building.

The landlord disputed the tenant's allegation that the sinks were not repaired properly and stated that the delay in fixing the sink was caused primarily through the tenant's refusal to cooperate. The landlord stated that the sink was repaired and was functional so long as the tenant did not over-fill the basin. In regards to the statements made by the tenant that the landlord had harassed the tenant by videotaping him and his suite, the landlord testified that the camera was only used to record the repair work.

In regards to the alleged problems with the stored material, the landlord did not consider this to be contributing to a vermin problem and in fact, according to the landlord, the traps they set in the garage for mice verified that very few were present.

.Analysis

After a mediated discussion in regards to the ending of the tenancy, the parties came to a mutually agreeable resolution the terms of which are as follows:

- The tenant agrees to vacate the unit on January 31, 2010 and the landlord will be issued an enforceable Order of Possession effective that date.
- The landlord agrees to issue a Two-Month Notice to End Tenancy for Landlord's Use ending the tenancy effective January 31, 2011 and the tenant agrees not to file to dispute this notice. Pursuant to section 51 of the Act, the tenant is thereby entitled to receive compensation of \$650.00 representing the equivalent of one month rent payable or credited in January 2011.
- The landlord agrees to comply with the Act by giving proper written notice 24 hours prior to showing up at the rental unit and agrees not to engage in any conduct that interferes with or bothers the tenant including filming the tenant or the unit and the entry to the unit. The landlord accepts that entrance will be limited to himself except when accompanying a professional repair person.
- The tenant agrees to cooperate and grant the landlord access for a reasonable purpose provided that proper written notice is given.
- The landlord will re-inspect the sink issue and take action to properly repair the problem, failing which the tenant is at liberty to make an application for a rent abatement.
- The tenant will repay the \$650.00 rent refunded for November 2010 to the landlord forthwith.

- The landlord will re-package the stored fabric in the garage into air-tight plastic containers and commence with aggressive vermin control throughout the building engaging a pest control professional if efforts do not succeed.
- The tenant will cooperate with the vermin-control measures ensuring that his unit is reasonably clean and uncluttered.

The above terms were agreed to by both parties and are enforceable.

Conclusion

Based on the agreement reached by the parties during these proceedings, I order the landlord to comply with the Act by giving 24 hours written notice to access the rental unit on his own and not to engage in any conduct that unreasonably interferes with the tenant.

Based on the agreement reached by the parties during these proceedings I order the landlord to clean up and repack the material in the garage and commence intensive vermin control measures without delay engaging a professional if required and to reassess the previous sink repairs and take necessary remedial action if necessary without delay.

Based on the agreement reached by the parties during these proceedings, I grant the landlord an Order of Possession effective at 1:00 p.m. on Monday January 31, 2011. This order is based on terminating the tenancy for landlord's use and the tenant is therefore entitled to receive the equivalent of one-month rent in compensation in the amount of \$650.00.

This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The remainder of the tenant's and landlord's applications are dismissed without leave.

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: November 2010.

Dispute Resolution Officer