

DECISION

Dispute Codes CNC, RP

Introduction

This hearing dealt with an application by the tenant to cancel a 1 month notice to end tenancy for cause and for the landlord to make repairs. The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing by registered mail. I found that the landlord had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act.

Summary of Background and Evidence

This tenancy started January 15, 1999 and the tenant pays current rent of \$515.00, the tenant paid a security deposit of \$247.50.00. On January 1, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause: repeatedly late paying rent; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee.

The tenant stated at the beginning of this hearing that the landlord often does not call into the hearing and then files for review and requests a re-schedule of the hearing on the grounds that there was an issue preventing him from attending at the original day and time.

The tenant testified that she does not pay her rent late and that she provides her landlord with posted cheques well in advance of the rent due date. The tenant stated that she was a resident caretaker for the property from May 2000 to December 2008 and that the terms of her tenancy agreement have never changed either before during or after this time. The tenant stated that her rental unit was not supplied as part of her employment as she was a tenant prior to becoming a caretaker and has remained a tenant since December 2008.

The tenant stated that the landlord had accused her for being the reason her daughter vacated the property however the tenant stated that this was false and that her daughter had moved do to the sub-standard living conditions on the property.

The tenant testified that there are open areas in the building exterior perimeter wall that allow animals access to under the building. The tenant stated that there is now a hole in her bedroom wall where raccoons have clawed through the wall and on at least one occasion the tenant has seen a raccoon poking it's head through the hole watching her. To prevent the raccoons from coming into her rental unit the tenant has had to place a board up over the hole and block it. The tenant stated that there is currently a very bad mice infestation in the entire building and she will often see mice running on her counters, across the floor etc at all time of the night and day.

The tenant stated that there is no cover for the mail slot on her door and that she has to cover the hole with a towel to prevent wind and rain from coming into her unit. There is also torn carpet in the laundry room which is a tripping hazard that the landlord will not repair. The tenant stated that the flooring in her bathroom needs repair and is broken and poorly patched. The tenant stated that when she has requested repairs in the past that the landlord has told the tenant that the rental unit had be completely vacated by the tenant prior to completing any repairs; the landlord has attempted to evict the tenant twice in the past and was unsuccessful in both attempts.

The tenant testified that residents in the building have been asking for the landlord to repair the broken drain pipe at the side of the building because of the hazardous sludge build up. The tenant stated that at times the pool of sludge is so large that tenants have to walk through it to get to their units and that Canada Post has at times, refused to deliver mail as the letter carrier will not walk through the sludge. The tenant stated that the sludge now runs under the wall and into one of the rental units. The tenant herself has slipped while walking through this sludge and fell breaking 1 of her ribs. The tenant stated that she has repeatedly requested the name of the landlord's insurance company but that he refuses to provide her with that information.

The tenant stated that the landlord does not maintain the property and that tenants are left responsible for mowing the lawn, shovelling the sidewalks, replacing exterior lights and removing trash from the property.

Law

Residential Tenancy Act **Section 7 Liability for not complying with this Act or a tenancy agreement**

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Act **Section 32 Landlord and tenant obligations to repair and maintain**

(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

Residential Tenancy Act **Section 33 Emergency Repairs**

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,*
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,*
- (iii) the primary heating system,*
- (iv) damaged or defective locks that give access to a rental unit,*
- (v) the electrical systems, or*
- (vi) in prescribed circumstances, a rental unit or residential property.*

Analysis

In the absence of any evidence to the contrary from the landlord, I must find that the Notice to End Tenancy for cause is set aside.

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to an order for the landlord to complete repairs.

I Order that the landlord complete repairs as outlined below:

1. Mouse infestation - Pest company to be called to address building infestation by February 7, 2011
2. Hole in tenant's bedroom wall - to be repaired by February 18, 2011
3. Mail slot cover at tenant's unit - to be repaired by February 18, 2011
4. Torn carpet in laundry room - to be repaired by February 25, 2011
5. Bathroom floor in tenant's unit - to be repaired by February 25, 2011
6. Holes around perimeter base of building - to be repaired by March 31, 2011
7. Drain pipe - to be repaired by April 29, 2011

The landlord is to have the listed repairs completed by the dates noted. If the landlord does not complete repairs for items 1 (one) through 5 (five); mouse infestation, hole in bedroom wall, mail slot cover, carpet in laundry area, bathroom floor in tenant's unit; by February 25, 2011, the tenant effective March 1, 2011 will be entitled to a rent reduction

of \$200.00 per month until such time as items 1 (one) through 5 (five); have been properly and adequately repaired. Vacant possession is not required for these repairs to be completed.

If by April 29, 2011 the landlord has not repaired items 6 (six) and 7 (seven); the holes around the building perimeter and broken drain pipe that is leaking sludge; the tenant effective May 1, 2011 will be entitled to a rent reduction of \$100.00 per month until such time as the holes and drain pipe have been properly and adequately repaired. Vacant possession is not required for these repairs to be completed.

Conclusion

The Notice to End Tenancy is set aside.

If by February 25, 2011 the landlord has not repaired items 1 (one) through 5 (five), the tenant effective March 1, 2011 will be entitled to a rent reduction of \$200.00 per month until such time as items 1 (one) through 5 (five) have been properly and adequately repaired.

If by April 29, 2011 the landlord has not repaired items 6 (six) and 7 (seven), the tenant effective May 1, 2011 will be entitled to a rent reduction of \$100.00 per month until such time as the holes and drain pipe have been properly and adequately repaired.

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: January 26, 2011

Residential Tenancy Branch