



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNR, CNC, ERP, RP, LRE, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause, to set aside a Notice to End Tenancy for Unpaid Rent, for an Order requiring the Landlord to make repairs to the rental unit, and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

It is apparent from information provided on the Application for Dispute Resolution that the Tenant is also seeking a monetary Order for deficiencies with the rental unit, for loss of services during a flood, and for compensation for repairs done to the rental unit. The Tenant's Application for Dispute Resolution has therefore been amended to include a request for a monetary Order.

The Tenant stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the Landlord via registered mail at the address noted on the Application, on January 20, 2010. The Tenant cited a Canada Post tracking number that corroborates this statement. She stated that the package was returned to her with a notation that indicates the mail was "refused by recipient: In the absence of evidence to the contrary, I find these documents have been served in accordance with section 89 of the *Act*, however the Landlord did not appear at the hearing. The hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, should be set aside; whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, should be set aside, whether the Tenant is entitled to compensation for deficiencies with the rental unit, for loss of services during a flood, and for repairs done to the rental unit; whether there is a need to order the Landlord to make repairs to the rental unit; whether there is a need to suspend or set conditions on the Landlord's right to enter the rental unit; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Tenant stated that she and a male living in the lower portion of this residential complex jointly entered into a tenancy agreement with the Landlord. She stated that she and the male occupant living in the lower portion of the complex are both named on the tenancy agreement and that they both signed the tenancy agreement. She stated that the agreement requires her to pay rent of \$750.00 and that the occupant in the lower portion is required to pay \$700.00 in rent. The Witness for the Tenant, who is the occupant of the lower portion of the residential complex, corroborated the Tenant's statement that he signed a tenancy agreement that names him and the Tenant as co-tenants.

The Tenant did not submit a copy of the written tenancy agreement, although the Tenant stated that she has one in her possession. As this tenancy agreement is integral to determining the merits of this case, the Tenant was directed to submit a copy of the tenancy agreement to the Residential Tenancy Branch. The Tenant was advised that a decision in this matter would not be rendered until the tenancy agreement was received.

The Tenant stated that the Landlord is supposed to pick up the rent from the Tenant at the rental unit on the first day of each month, although at times during the tenancy he did not pick the rent up when it was due.

The male occupant stated that they did not have the rent for January on January 01, 2011 as he had neglected to complete the appropriate forms and the rent cheque was not given to him by the Ministry of Social Services. He stated that he did not get the rent cheque from the Ministry of Social Services until January 05, 2011.

The Tenant stated that arrangements were made to meet the Landlord at the rental unit around dinner time on January 06, 2011, for the purposes of providing him with the rent cheque. She stated that she was told by the persons living in the lower portion of the rental unit that the Landlord did attend at the rental unit at the scheduled meeting time but the Tenant and other occupants of her home were not home to meet the Landlord. The male occupant subsequently stated that they were home at the scheduled meeting time but they must not have heard the Landlord knock on the door.

The Tenant stated that they phoned the Landlord on January 06, 2011 and again tried to make arrangements to give him the rent cheque, at which time he told them he would not be returning to the rental unit. She stated they did not consider mailing the outstanding rent to him, even though they mailed the Application for Dispute Resolution to him on January 20, 2011, nor did they consider delivering the rent cheque to the Landlord's home.

The Tenant stated that a person acting on behalf of the Landlord personally served her with a Ten Day Notice to End Tenancy for Unpaid Rent some time during the evening of

January 06, 2011. She stated that she believes the occupants living in the lower portion of the rental unit were also served with a Ten Day Notice to End Tenancy for Unpaid Rent on January 06, 2011.

The Tenant did not submit a copy of the Ten Day Notice to End Tenancy, although the Tenant stated that she has one in her possession. As this Ten Day Notice to End Tenancy is integral to determining the merits of this case, the Tenant was directed to submit a copy of the Notice to the Residential Tenancy Branch. The Tenant was advised that a decision in this matter would not be rendered until the Notice to End Tenancy was received.

The Tenant stated that they made no attempt to pay the \$750.00 in rent they owed the Landlord for January 01, 2011 after receiving the Notice to End Tenancy, as the Landlord had already advised them he would not be returning to pick up the rent.

The Witness for the Tenant stated that he has not paid his rent that was due for June of 2010, July of 2010, October of 2010, November of 2010, December of 2010, or January of 2011, as he believes he is due compensation for personal property that was damaged when the rental unit flooded in May of 2010. He acknowledged that he did not have authorization from the Landlord or the Residential Tenancy Branch to withhold any portion of the rent.

The Tenant stated that a person acting on behalf of the Landlord personally served her with a One Month Notice to End Tenancy Cause some time during the evening of January 06, 2011, which declared that they must vacate the rental unit by February 28, 2011. As this Notice to End Tenancy is integral to determining the merits of this case, the Tenant was directed to submit a copy of the Notice to the Residential Tenancy Branch. The Tenant was advised that a decision in this matter would not be rendered until the Notice to End Tenancy was received.

The Tenant is seeking a rent rebate of \$200.00 per month, in part, because there was a flood in the lower portion of the rental unit and their co-tenants had to live with them between May 09, 2010 and August 15, 2010. The male occupant and the Witness for the Tenant both stated that there was a sewer back up in the lower portion of the rental unit; that significant repairs were required as a result of the incident; that the repairs rendered the rental unit uninhabitable for approximately ten weeks; and that the occupants in the lower portion of the residential complex lived in the upper portion of the complex for approximately ten weeks.

The Tenant is seeking a rent rebate of \$200.00 per month, in part, because there were a number of deficiencies with the rental unit. The Tenant submitted a letter, dated October 01, 2010, which list the deficiencies with the rental unit that require repair. The Tenant is also seeking an Order requiring the Landlord to repair the identified deficiencies, some of which she believes represent a significant fire hazard.

On January 27, 2011, prior to my receiving a copy of the tenancy agreement and a copy

of either Notice to End Tenancy, I presided over a hearing involving the same Tenant and the same Landlord. At this hearing the Tenant agreed to withdraw her application for a monetary Order arising from the flood and deficiencies with the rental unit; she agreed to withdraw her application to set aside the Notice to End Tenancy for Unpaid Rent; and she agreed to withdraw her application to set aside the Notice to End Tenancy for Unpaid Rent as part of a mutual agreement to settle the matters in dispute at the hearing on January 27, 2011.

This mutual agreement was reached in conjunction with the Landlord's agreement to withdraw the Landlord's application to set aside the Notice to End Tenancy for Unpaid Rent; in conjunction with the Landlord's agreement to withdraw the Landlord's application to set aside the Notice to End Tenancy for Cause; and in conjunction with the Landlord's agreement to withdraw the application for a monetary Order. The mutual agreement included a mutual agreement to end the tenancy on February 28, 2011 with the understanding that the Tenants would pay their portion of the rent for February and January by February 02, 2011.

The Tenant is also seeking an Order suspending or setting conditions on the Landlord's right to enter the rental unit. The Tenant stated that in the summer of 2010 she found the Landlord inside her rental unit and that on January 06, 2011 the occupant of the lower portion of the residential complex found the Landlord inside her rental unit. She stated that the Landlord did not provide notice of his intent to enter on either occasion and he was not permitted into the rental unit by the Tenants.

A copy of the tenancy agreement, with the exception of page 2 of the agreement was submitted to the Residential Tenancy Branch by the Tenant on January 26, 2011. This document was received by me after the conclusion of the aforementioned hearing on January 27, 2010 and was considered prior rendering this decision.

A copy of the Ten Day Notice to End Tenancy was submitted to the Residential Tenancy Branch by the Tenant on January 26, 2011. This document was received by me after the conclusion of the aforementioned hearing on January 27, 2010 and was considered prior rendering this decision.

A copy of the One Month Notice to End Tenancy was submitted to the Residential Tenancy Branch by the Tenant on January 26, 2011. This document was received by me after the conclusion of the aforementioned hearing on January 27, 2010 and was considered prior rendering this decision.

Analysis

I find that the Tenant agreed to withdraw her application for a monetary Order arising from the flood and deficiencies with the rental unit; she agreed to withdraw her application to set aside the Notice to End Tenancy for Unpaid Rent; and she agreed to withdraw her application to set aside the Notice to End Tenancy for Unpaid Rent as part of a mutual agreement to settle the matters in dispute at the hearing on January 27,

2011.

I find that the Tenant reached an agreement to withdraw these applications prior to the conclusion of the proceedings on January 26, 2011, as the proceedings are not deemed to have been concluded until I received and considered the evidence that the Tenant was directed to submit at the conclusion of the hearing. I further find that the Tenant reached an agreement to withdraw these applications prior to the conclusion of the proceedings on January 26, 2011, as I had not yet rendered a decision in that matter.

As the Tenant has withdrawn her application for a monetary Order arising from the flood and deficiencies with the rental unit; her application to set aside the Notice to End Tenancy for Unpaid Rent; and her application to set aside the Notice to End Tenancy for Unpaid Rent, I find that there is no need to make a determination on those issues.

As this tenancy is ending, by mutual consent, I find it is unnecessary to Order the Landlord to make all of the repairs listed on the Tenant's letter dated October 01, 2010. As this tenancy is ending on February 28, 2011, I find that many of the repairs will not benefit the Tenant and that the repairs themselves will likely be an unnecessary inconvenience to the Tenant.

I do, however, find that it is necessary for the Landlord to have the rental unit inspected by a bylaw inspector from the City of Surrey, a fire inspector from the City of Surrey, or a licensed building inspector for the purposes of determining whether immediate repairs are necessary to ensure the immediate safety of the occupants in the rental unit, which specifically includes fire hazards. I find that this inspection must occur prior to February 04, 2010.

In the event that the inspection identifies repairs that are needed to ensure the immediate safety of the occupants in the rental unit, I hereby Order the Landlord to make those necessary repairs as soon as possible and, in any event, prior to the rental unit being occupied by new tenants.

Based on the evidence provided by the Tenant and in the absence of evidence to the contrary, I find that on at least two occasions the Landlord has entered the rental unit without lawful authority.

Conclusion

As I have determined that the Landlord has entered the rental unit without lawful authority, I hereby Order the Landlord to refrain from entering the rental unit for the remainder of the tenancy unless one of the following applies:

- **at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purposes for entering, which must be reasonable, and the date and the time of the entry, which**

must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- **the landlord has an order of the director authorizing the entry**
- **the tenant has abandoned the rental unit**
- **an emergency exists and the entry is necessary to protect life or property.**

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 27, 2011.

Residential Tenancy Branch
