



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC ERP RP RR

Introduction

This hearing convened on March 3, 2011 and again for the present session on March 31, 2011. This decision should be read in conjunction with my interim decision of March 7, 2011.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to end this tenancy for cause?
2. If not, have the Tenants met the burden of proof to obtain Orders to have the Landlord complete emergency repairs and repairs to the unit?
3. Have the Tenants met the burden of proof to be allowed to reduce their rent for services or facilities agreed upon but not provided?

Background and Evidence

The Tenants testified they entered into a month to month tenancy agreement with the Landlord effective May 1, 2010. The current monthly rent is payable on the first of each month in the amount of \$600.00 and prior to May 1, 2010 the Tenants paid \$300.00 as the security deposit.

The Tenants have received permission from the Landlord to have pets and have agreed to pay the Landlord a \$300.00 pet deposit. \$150.00 was paid on March 24, 2011 and the balance of \$150.00 will be paid April 20, 2011 as per their agreement with the Landlord.

The Tenants advised that since the last hearing the Landlord has agreed that they do not have to move out in order to complete the repairs. The Landlord has hired contractors to complete the repairs and they began the work on March 28, 2011. The parties have agreed to have the contractors work directly with the Tenants for access to the unit. The Tenants confirmed they are happy with the working relationship they have established with the contractors. They confirmed that several repairs have been

completed already and they are expecting their toilet to be replaced today. Based on what the contractors have told them the work will include replacing the bathtub and toilet, painting the laundry room, fixing the kitchen cupboards which contain mould, replace the living room window, and build a deck outside.

The Tenants advised the Landlord told them the interior construction would last approximately two weeks but they are not certain this will be the case. They have been told verbally by the Landlord that they will be compensated for this time however they have nothing in writing. They have already lost the use of the kitchen for three days when the new ceramic tile was installed and they do not know how long they will be without the toilet or tub. They are seeking reduced rent in the amount equal to two weeks rent which is \$300.00.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

I have carefully considered the Tenants' evidence and the recent written submission by the Landlord which outlines a chronological list of events since the previous hearing. In this letter the Landlord notes that she told the Tenants they were no longer required to vacate the unit for renovations. Therefore, based on the aforementioned I hereby cancel the 1 Month Notice to End Tenancy for Cause.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The evidence supports the repairs are underway and are scheduled to continue. Therefore there is no need to issue Orders to have emergency repairs or repairs completed.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the Tenants had applied for a rent reduction based on Section 27, I find they have provided no evidence indicating that the landlord has breached this section of the *Act*.

I accept that during the repairs there may be times that services or facilities will be restricted, such as use of the kitchen or bathroom, but that those restrictions will be temporary in nature and not intended by the landlord to be a permanent withdrawal or restriction of those services.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the Landlord to make the rental unit suitable for occupation which warrants that the Landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the tenants have suffered, and will continue to suffer, a loss of quiet enjoyment, for approximately two weeks between March 28, 2011 and April 8, 2011, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the tenants are entitled to compensation for that loss.

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the

situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As such, I make note that the project work is being completed Monday to Friday normally from between 9:00 a.m. and 4:00 p.m. leaving the residential property undisturbed for all evenings, nights and weekends.

Based on the aforementioned I hereby award the Tenants a reduction in their rent in the amount of **\$150.00** which is comprised of \$75.00 for each of the two weeks between March 28, 2011 and April 8, 2011.

Conclusion

The 1 Month Notice to End Tenancy issued January 30, 2011 is **HEREBY CANCELLED** and is of no force or effect.

The Tenants may deduct the one time award of **\$150.00** from the May 1, 2011 rent.

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: April 01, 2011.

Residential Tenancy Branch