



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes O, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to end the fixed term tenancy early, and to recover filing fee from the Landlord for the cost of this application.

Both parties signed into the conference and gave affirmed testimony.

The Tenant testified that she mailed the Notice of Hearing documents, together with her documentary evidence, to the Landlord by registered mail on March 5, 2011.

The Landlord did not provide any documentary evidence. She testified that she received the Notice of Hearing documents and evidence on March 11, 2011, and that it was too late for her to provide any documentary evidence to the file because she would be outside the time limit for providing evidence. The Landlord was advised that she was within the “five day” time requirement, but in any event, according to the instructions provided with the Notice of Hearing package (on page 3 of 4 of the Landlord and Tenant Fact Sheet). The Fact Sheet also states that if the Respondent doesn’t receive the Notice of Hearing documents in time to provide evidence within the “five day” rule, then the Respondent may provide evidence to the Applicant and the Residential Tenancy Branch up to two clear days before the date of the Hearing.

Issues(s) to be Decided

- Should the Tenant be authorized to end the tenancy prior to the end of the term on the tenancy agreement?

Background and Evidence

This is a fixed term tenancy which commenced November 1, 2010, for a fixed length of time of one year, ending October 1, 2011. Rent is payable on the first of each month in the amount of \$950.00 per month. Utilities are not included in the rent.

The Tenant wrote to the Landlord on November 25, 2010, stating that the toilet was plugged for the third time; the washing machine was broken; and the pipes in the porch had frozen.

The Landlord responded immediately, stating that she was waiting for an assessment from a plumbing specialist; she had ordered a new washing machine that would be delivered in two weeks; and that she would provide a space heater for the porch.

The Landlord testified that the plumber discovered tree roots were causing the toilet to back up, so they were removed.

The Tenant testified that the toilet still plugs up every other day and causes foul smells. The Tenant stated that the plumber advised her to run the bathtub tap when flushing the toilet to ensure that it flushed. The Tenant testified that the porch, which houses the washer and drier, is so poorly insulated that when she used the space heater provided by the Landlord, her electricity bills were very high. She stated that the pipes froze again in February, so she wrote to the Landlord on February 14, 2011, and asked to be allowed to end the lease early. The Tenant stated that the Landlord refused this request and stated that she could not do anything more until she returned from overseas.

The Landlord testified that she immediately dealt with the problems as soon as the Tenant advised her in November, 2010. She testified that her brother-in-law is on call when she is out of the country. The Landlord stated that she has arranged for an

independent home inspector to examine the rental unit and that the inspection will occur in 4 days.

Analysis

This is a fixed term tenancy and therefore neither the Landlord nor the Tenant may end the tenancy except for cause or by agreement of both parties. In this case, the parties do not agree that the tenancy will end, and the Tenant seeks to end the tenancy for cause. Section 45(3) of the Residential Tenancy Act (the "Act") states:

Tenant's notice

- 45** (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Breach of a material term of the tenancy must be a breach that is so serious that it goes to the heart of the tenancy. The Tenant did not provide sufficient evidence that the plumbing in the rental unit was in a state that required emergency repair (i.e. statement from a professional plumber). Therefore, the Tenant's application to end the fixed term tenancy early is dismissed.

I find that the Landlord acted immediately to address the Tenant's concerns outlined in her letter of November 25, 2010. However, the Tenant wrote a subsequent letter on February 14, 2011, and the Landlord had not addressed those concerns by the date of the Hearing.

Section 62 of the Act enables me to make any order necessary to give effect to the rights, obligations and prohibitions under the Act. Section 32(1) of the Act states:

- 32** (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.

I Order the Landlord to comply with Section 32 of the Act and engage an independent professional home inspector or plumber to inspect the rental unit in general, and specifically for problems with the plumbing in the bathroom and laundry area and insulation in the laundry area.

Section 65(1)(f) of the Act states:

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

I find that the Tenant is entitled to rent abatement for the month of March, 2011, in the amount of \$142.50 (15% of the monthly rent), rent abatement for the month of April, 2011, in the amount of \$142.50, and a further rent reduction in the amount of \$142.50 per month commencing May 1, 2011, until the Landlord has arranged for the professional inspection and repaired any items recommended by the professional inspector. I Order that the Landlord provide the Tenant with a copy of the inspector's report. This rent reduction will remain in effect until the Tenant agrees **in writing** that the required repairs are completed or the Landlord is successful on an Application for a determination by a Dispute Resolution Officer that the repairs are completed.

The Tenant's application had merit and I find that she is entitled to recover the cost of the filing fee from the Landlord.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Tenant is hereby authorized to deduct her rent abatement and recovery of the filing fee from future rent due to the Landlord. For clarification purposes, May, 2011, rent will be \$472.50. Rent thereafter will be \$807.50 until the Tenant agrees **in writing** that the required repairs are completed, or the Landlord is successful in an application for a determination that the repairs are complete.

Conclusion

The Tenant's application to end the fixed term tenancy early is dismissed.

The Tenant is entitled to rent abatement in the amount of \$142.50 for each of the months of March and April, 2011, and a further rent reduction of \$142.50 until the required repairs are completed and the Tenant agrees in writing that the repairs are completed, or the Landlord is successful in an application for a determination that the repairs are completed.

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 06, 2011.

Residential Tenancy Branch