



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP, FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use of property, a order for the landlord to comply with the Act, an order for the landlord to complete repairs and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began December, 2010 with monthly rent of \$400.00 and the tenant paid a security deposit of \$200.00. On September 23, 2011 the landlord served the tenant with a 2 Month Notice for Landlord's Use of Property:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant testified that an immediate family member of the landlord's would not be moving into the rental unit therefore the landlord's notice was not valid. The landlord testified that a family member was moving in and verified that it was his brother and his brother's family that would occupy the rental unit.

The tenant stated that she always paid her rent in cash and that the landlord had not been providing her with receipts for the cash rent payments. The landlord responded by stating that he would provide the tenant receipts but that he hadn't in the past because the tenant had never asked for one. The landlord then went on to state that the tenant had not paid the October 2011 rent which the tenant denied.

The tenant stated that the towel bar and shower door in her bathroom are broken and that the landlord has refused to come fix them. The tenant said that the towel bar has

completely fallen off the wall and one side of the shower door had come off as the track needs to be re-attached. The landlord stated that after the tenant applied for dispute resolution he had not gone to the tenant's rental unit to complete repairs as he was waiting for the hearing to take place.

The tenant acknowledged that in her evidence she had referred to what she believes to be rodent holes outside in the yard, but that there was not a rodent problem in the rental unit.

The tenant indicated that she needed 3 months to vacate because of work and school and after some discussion between the parties the landlord and tenant agreed to an mutual end of tenancy date of January 31, 2012 at 1PM. The landlord stated that he will print off a Mutual Agreement to End Tenancy form from the RTB website for both he and the tenant to sign. The tenant understands that all rent must be paid to the landlord even though the tenancy is to end January 31, 2012.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds for entitlement to have the landlord's 2 Month Notice for Landlord's Use of Property set aside.

The landlord acknowledged that it was his brother and his brother's family that were to occupy the rental unit. Section 49(1) of the *Act* defines "close family member" as *the individual's father, mother, spouse or child or father, mother or child of that individual's spouse*, therefore as the landlord's brother does not meet the definition of the *Act*, the landlord's notice is hereby set aside.

The landlord has not been providing the tenant with receipts for the cash rent payments per section 26 (2) of the *Act*. I hereby Order that the landlord provide the tenant with a receipt for any and all cash payments.

There are repairs required in the rental unit and while these are not emergency repairs that must be attended to immediately they must be addressed in a timely manner as the tenant's use of the rental unit is being impacted. I hereby Order that the landlord complete repair of the towel bar and shower door no later than November 12, 2011.

As the tenant has been successful in their application the tenant is entitled to recovery of the \$50.00 filing fee.

Conclusion

The landlord's 2 Month Notice to End Tenancy for Unpaid rent dated September 23, 2011 is hereby set aside with the result that the tenancy continues uninterrupted.

The landlord and tenant mutually agreed to end the tenancy effective January 31, 2012 at 1PM.

The landlord is Ordered to complete repairs on the rental unit as outlined above.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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: October 26, 2011.

Residential Tenancy Branch