



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC, MT, PSF, MNDC, and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application to set aside a Notice to End Tenancy for Cause; for more time to apply to set aside a Notice to End Tenancy for Cause; for an Order requiring the Landlord to provide services or facilities; for a monetary Order for money owed or compensation for damage or loss; to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the Tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the Tenant's request to set aside the Notice to End Tenancy, the Tenant's application for more time to apply to set aside a Notice to End Tenancy for Cause, and the Tenant's application to recover the filing fee at these proceedings, as those issues are the most urgent. The balance of the Tenant's Application for Dispute Resolution is dismissed, with leave to re-apply.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause should be set aside; whether there is a need grant the Tenant more time to apply to set aside a Notice to End Tenancy for Cause, and whether the Tenant is entitled to recover the filing fee paid to file this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on November 20, 2011, which declared that the Tenant must vacate the rental unit by December 31, 2011. The reasons stated for the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and that the tenant has not done required repairs of damage to the unit.

Residential Tenancy Branch records show that the Tenant electronically filed an Application for Dispute Resolution, in which the Tenant applied to set aside this Notice to End Tenancy, on November 30, 2011 and that the Application for Dispute Resolution was subsequently amended on December 08, 2011. I find that the Tenant filed the Application for Dispute Resolution on November 30, 2011, which is within the time limit established by legislation. I therefore find that there is no need to consider the Tenant's application for more time to apply to set aside a Notice to End Tenancy for Cause.

In support of the Landlord's attempt to end the tenancy because the tenant has not done required repairs of damage to the unit, the Landlord contends that the Tenant did not repair a hole in the drywall of the rental unit. The male tenant acknowledged that they have not repaired a hole in the drywall that occurred during their tenancy when the door handle came into contact with the wall inside the rental unit.

The Landlord is attempting to end this tenancy, in part, because he says the female Tenant has been verbally abusive to him and to the Agent for the Landlord.

The Landlord stated that on one occasion he was making repairs in the rental unit; that he had completed a repair to a drain but had not yet completed a repair to some drywall; and that the female ordered him to leave her home, at which time she used profanities. The female Tenant denied using profanities however she admits that she ordered the Landlord out of her home after he became involved in an argument with her husband about parking arrangements. She stated that the Landlord had completed the repairs he was making at the time he was ordered out of the home.

The Landlord stated that on another occasion he was making repairs in the rental unit when he and the female Tenant argued about the cost of paint for the bathroom, at which time the female Tenant used a racial slur. Both Tenants deny the allegation.

The Landlord stated that on a third occasion he delivered a toilet seat to the rental unit; that they again argued about the cost of paint for the bathroom, at which time the female Tenant used a racial slur. Both Tenants deny the allegation.

The Agent for the Landlord stated that on one occasion she observed the female Tenant throw garbage over the balcony, although she does not know whether she left it there. **The female Tenant denies the allegation.**

The Agent for the Landlord and the Landlord contend that the Tenant purchased paint, in a color that had not been previously approved by the Landlord, and that the Agent for the Landlord painted the bathroom for the Tenant. The Agent for the Landlord stated that while she was painting the bathroom the female Tenant made derogatory comments about her looks and the male Tenant made derogatory comments about the Agent's son. Both Tenants deny the allegation.

The Agent for the Landlord said that she was friends with the Tenants at the start of the tenancy; that on at least one occasion she was visiting the Tenant who asked her to leave while using profanities; that the female Tenant has repeatedly insulted her and her children; that she has witnessed the female Tenant berate the male Landlord, which included the use of racial slurs; that the female Tenant has made sexual advances to her husband; that the male Tenant has insulted her children; and that the male Tenant has ordered her from their home while using profanities.

The Landlord submitted a letter from the Agent for the Landlord's husband, in which he declared that the female Tenant made sexual comments to him, including asking to kiss him; and that he witnessed the female Tenant insult his brother-in-law.

The female Tenant stated that she has never tried to kiss the Agent for the Landlord's husband.

The Landlord submitted a letter from a former tenant who lived beside these tenants for a short period at the start of this tenancy. The author of the letter declared that the Tenants ran up and down the stairs all night; that they played loud music; that children threw garbage on the floors; and that the children played loudly in the underground parking; and that the female Tenant frequently complained. The female Tenant denied all of the allegations.

The Agent for the Landlord stated that she has overheard the female Tenant yelling insults at her neighbours. The female Landlord stated that the female Tenant is making another tenant in the residential complex uncomfortable when she yells over the balcony and asks questions about possible deficiencies with the complex.

The Witness for the Landlord stated that the female Tenant has asked her many questions about the condition of her rental unit; that her boyfriend believes the female Tenant was impaired on one morning; and that the female Tenant did yell from her balcony to ask the Witness' boyfriend if they had bugs. When she was asked if she was

being disturbed by the female Tenant's behaviour she replied that she was not. When asked if she had witnessed the female Tenant be verbally abusive to the Landlord she replied that she had not.

Analysis

Section 47(1)(g) of the *Residential Tenancy Act (Act)* authorizes landlords to end a tenancy if the tenant does not repair damage to the rental unit, as required by section 32(3) of the *Act*, within a reasonable time. Section 32(3) of the *Act* requires tenants to repair damage to the rental unit that is caused by the actions or neglect of the tenant or the tenant's guest.

I find that the Tenant was obligated to repair the hole in the wall that was caused when the door handle came into contact with a wall in the rental unit, pursuant to section 32(3) of the *Act*. I find, however, that this is no need to repair the hole in a particularly timely manner, given that the hole was cosmetic and the damage was within the rental unit. In my view this damage was reasonably minor and it would not be unreasonable for the Tenant to delay the repairs, providing they repaired it by the end of the tenancy, as is required by section 37(2) of the *Act*.

As the Landlord has failed to establish that the repairs to the rental unit were not completed within a reasonable time, I find that the Landlord has not established that it has grounds to end this tenancy pursuant to section 47(1)(g) of the *Act*.

Section 47(1)(d)(ii) of the *Act* authorizes landlords to end a tenancy if the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Even if I were to accept the Landlord's evidence in its entirety, I find that it does not establish grounds to end this tenancy pursuant to section 47(1)(d)(ii) of the *Act*. In reaching this conclusion I was influenced by the fact that there is no evidence that the alleged incidents has had, or will have, a negative impact on the safety or health of the Landlord.

In reaching this conclusion I concluded that even if the allegations were true, they did not significantly interfere with the Landlord's ability to maintain his property and did not, therefore, seriously jeopardize the lawful right or interest of the landlord. In reaching this conclusion I was influenced by the fact that the Landlord has been able to make repairs in the rental unit; that the Landlord has the ability to simply ignore inappropriate comments when working in the rental unit; and that the Landlord has the ability to hire repair persons if he does not wish to interact with the Tenant.

Although the female Tenant acknowledged ordering the Landlord out of the house on one occasion, I am not convinced that this incident seriously jeopardized the Landlord's right to maintain the rental unit, as the repairs the Landlord contends he was unable to make were cosmetic repairs to an interior wall and could have been done at a time when the parties were not in conflict about other issues.

As the Landlord has failed to establish that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, I find that the Landlord has not established that it has grounds to end this tenancy pursuant to section 47(1)d(ii) of the *Act*.

Section 47(1)(d)(i) of the *Act* authorizes landlords to end a tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. Although the alleged incidents may constitute grounds to end this tenancy pursuant to section section 47(1)(d)(i) of the *Act*, I specifically note that I have not made a determination in this regard as the Landlord has not cited this reason for ending the tenancy on the Notice to End Tenancy that was served to the Tenant.

Conclusion

As the Landlord has not established that it has grounds to end this tenancy pursuant to sections 47(1)(d)(ii) or 47(1)(g) of the *Act*, I grant the Tenant's application to set aside the Notice to End Tenancy. This tenancy will continue until it is ended in accordance with the *Act*.

As the Tenant's application has been granted, I find that they are entitled to recover the cost of filing this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I hereby authorize the Tenant to reduce one monthly rent payment by \$50.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 27, 2011.

Residential Tenancy Branch