



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, RR, PSF, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause. The tenant was also seeking an order to force the landlord to do repairs and to provide services and facilities required by law. In addition, the tenant was seeking a rent abatement.

Both the landlord and the tenant appeared at the hearing and each gave testimony.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was valid or whether it should be cancelled as requested by the tenant.
- Whether the landlord should be ordered to do repairs and to supply services and facilities required by law.
- Whether the tenant is entitled to compensation for loss of value to the tenancy

The burden of proof is on the landlord/respondent to justify that the Notice to End Tenancy complies with the criteria specified under the Act. The burden of proof is on the tenant to justify the need for the orders to comply and the monetary claim for damages or loss.

Background and Evidence

The tenancy began in May 2011 and the rent is \$685.00. A security deposit of \$342.50 was paid. The landlord testified that a One-Month Notice to End Tenancy for Cause was served on November 23, 2011. No copy of the Notice was in evidence. The landlord testified that the Notice was issued because, the tenant had engaged in the following behaviour without the landlord's agreement:

- constructed or moved onto the property outbuildings that did not comply with local codes
- used building materials and other property that belonged to the landlord
- drilled holes and ran electrical cords through the exterior walls of the log cabin
- tampered with equipment in the pump house
- installed a home-made woodstove without a permit in one of the outbuildings
- installed underground water pipes to an outside tap and for a new laundry facility set up in one of the out buildings that allowed waste water to discharge onto the adjacent property
- changed the locks on the cabin and did not supply new keys to the landlord
- turned off the refrigerator in the unit and reported it as broken

The landlord supplied photos of the above conditions described and testified that the tenant had seriously jeopardized the health and safety of others and put the property at risk.

The tenant agreed to remove the out-buildings, water lines, woodstove, cords and items brought onto the property. The tenant agreed to restore the locks and give the landlord a key and to return the landlord's property.

With respect to the tenant's request for orders to force the landlord to do repairs and supply services and facilities required by law, the tenant testified that:

- the electrical system in the pump house is not safe and to code
- the landlord had locked up the pump house to deny him access
- the water supply had been turned off
- there are exposed wires and unfinished walls in the rental unit
- the sub-panel in the rental unit was installed too close to the sink area
- there are not sufficient working smoke detectors in the unit
- the tenant had lost some of his food when his refrigerator failed and also because the landlord had replaced his refrigerator with a compact refrigerator too small for proper use

The landlord testified that all of the electrical installations were done by a professional electrician and had passed code. However, the landlord has agreed to have qualified trades people inspect the areas of concern and address any deficiencies if necessary and to give the tenant a battery for the existing smoke alarm. The landlord testified that he will also have the exposed stud walls closed in. With respect to the refrigerator, the landlord testified that, after the tenant had reported that his refrigerator was not functioning, it was sent to be repaired and the technician found that the tenant had shut off the refrigerator. The landlord testified that once the thermostat was turned back on, it functioned perfectly fine. The landlord agreed to replace the temporary small refrigerator with the original one that was in the unit. With respect to the allegation that the landlord restricted the tenant's access to the pump house, the landlord testified that it was locked up because there is no need for the tenant to be meddling with the equipment in the pump house. According to the landlord, any emergency relating to the hydro service or water lines should be reported to the landlord immediately and qualified electricians or plumbers can be called in.

With respect to the request for a rent abatement, the tenant testified that all of the above-listed concerns had functioned to interfere with his use and enjoyment of the rental unit. The tenant felt that this justified a rent reduction. The tenant testified that he had withheld rent because of all the problems.

The landlord disputed the tenant's allegation that the above issues had significantly interfered with the tenancy and pointed out that the landlord had not violated the Act or agreement in any respect. The landlord felt that no rent abatement was warranted. The landlord stated that, because the tenant was in arrears for rent already, the landlord had issued a Ten Day Notice to End Tenancy for Unpaid Rent on December 2, 2011.

Analysis Notice to End Tenancy

I find that section 47, permits a landlord to give Notice to end a tenancy for cause and requires a One-Month Notice completed on the proper form with an effective date that is not earlier than one month after the date the landlord issues the notice; and is also the day before the day in the month, that rent is due under the tenancy agreement.

Based on the evidence and the testimony, I find that the tenant did engage in conduct that could certainly justify an end to the tenancy for cause. However, the tenant has made a commitment to rectify all of the transgressions, including the removal of the added buildings and other construction, to return the landlord's property and to give the landlord keys to the new locks or reinstalling the old locks.

Accordingly, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

With respect to the tenant's request for orders to force the landlord to do repairs and provide services, I find that no orders are necessary as the landlord has agreed to ensure that the tenant's complaints about safety are looked into and that the small refrigerator is replaced with the original one. I also find that the tenant is not entitled to have access to the pump house and it may remain locked by the landlord.

With regard to the portion of the tenant's application seeking monetary compensation, I find that an Applicant's right to claim damages from another party falls under section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The burden of proof, however, is on the tenant, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the landlord.

I find that, while there may be deficiencies in the unit that may need to be addressed, I also find that there have been no significant violations of the Act or agreement by this landlord. Therefore I find that the tenant has not sufficiently met the burden of proof to justify a rent abatement.

Conclusion

Based on the evidence and the testimony discussed above, I grant the portion of the tenant's application requesting that the One Month Notice to End Tenancy for Cause be cancelled and I hereby order that this Notice is cancelled and of no force nor effect.

The remainder of the tenant's application, including the reimbursement of the cost of the application is hereby dismissed without leave to reapply.

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: December 12, 2011.

Residential Tenancy Branch