



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, PSF, LRE

Introduction

This hearing was scheduled to hear the tenant's application to cancel a Notice to End Tenancy for Cause; for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to provide services or facilities required by law; and, to have conditions set upon the landlords' right to enter the rental unit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant stated that her request to cancel the Notice to End Tenancy was made erroneously and that she will be vacating the rental unit on or before January 31, 2012. The landlords verbally requested an Order of Possession. I will consider the landlord's request for an Order of Possession with this decision.

The tenant also indicated that it is not necessary to consider the request for services or facilities (heat and hot water) as these services have been provided to her before filing this application. Therefore, I make no orders for services or facilities with this decision.

Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Has the tenant established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Is it necessary to suspend or set conditions on the landlord's right to enter the rental unit?

Background and Evidence

The rental unit is a basement suite located in a property with a total of three living units. The landlords reside upstairs. The tenancy in the basement suite commenced in August 2008. Prior to living in the basement unit the tenant resided in the upper unit

with the landlords. The tenant currently pays rent of \$511.50 on the 1st day of every month.

Notice to End Tenancy

On December 21, 2011 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause. The explanation provided to the tenant by the landlord and one of the reasons indicated on the Notice is that the rental unit must be vacated because of a government order.

Monetary claim

On December 22, 2011 the tenant applied for monetary compensation of \$8,400.00. The tenant explained that she requested this amount based upon \$100.00 per month for the seven years she lived at the property without sufficient hot water.

The tenant testified that she verbally complained about a lack of hot water to the landlords on numerous occasions. In response, the landlords would give her excuses such as: other people are using the hot water or doing laundry or the pipes may be plugged. The tenant acknowledged that she did not make a request in writing for the landlords to make repairs. Nor did the tenant file an Application for Dispute Resolution seeking Orders for repairs. However, the tenant submitted that in August 2011 she “got really mad” and told the landlord she had purchased a liquid thermometer. Shortly thereafter the temperature of the hot water increased.

In August 2011 the tenant obtained the following readings using her liquid thermometer: 92 degrees at the kitchen sink; 89 degrees in the shower; and, 90 degrees at the bathroom sink. The tenant submitted that the 40 gallon hot water tank is insufficient for the size of the house and that a hot water tanks are usually set at 120 degrees.

The tenant submitted that other units in the house have had sufficient hot water and that the landlords are restricting hot water only to her unit.

The landlords submitted, through their interpreter, that the tenant had verbally complained about insufficient hot water but the landlords were of the position the tenant was provided normal hot water. The landlords were of the position the tenant wanted “boiling hot water.” The landlords claim that the same hot water is supplied throughout the house and it is not possible to restrict hot water for the tenant’s unit only. The landlords had a plumber attend the property and the hot water system was found to be fine and that nothing changed in August 2011.

The landlords were of the position that this monetary claim has come about because the tenant has received a Notice to End Tenancy and questioned why the tenant did not make an Application for Dispute Resolution sooner if this was such an issue.

Landlord's access to rental unit

The tenant submitted that the landlord had been in her unit on December 21, 2011 without proper notice or her consent. The tenant testified that she knows the landlord was in her unit because the thermostat setting was adjusted while she was out. Furthermore, she had seen the landlord enter the other rental unit on the property on a number of occasions. Finally, when she confronted the landlord he scratched his neck which she interprets to mean he acknowledged entering the unit.

The landlords denied going into the rental unit on December 21, 2011.

Both parties provided written statements in support of their position. I have read and considered their written statements in addition to verbal statements made during the hearing. I have also received plumbing and heating invoices from the landlord, calendar pages from the tenant; copies of the Notice to End Tenancy from both parties; and, the letter issued to the landlords by a city by-law enforcement officer.

Analysis

Upon consideration of all of the evidence before me I provide the following findings and reasons with respect to the matters before me.

Order of Possession

Pursuant to section 55 of the Act, where a Notice to End Tenancy is disputed by the tenant and the tenant's request to cancel the Notice is dismissed, the landlord shall be provided an Order of Possession upon a verbal request by the landlord at a scheduled hearing. As the tenant indicated she no longer wished to dispute the Notice or have it cancelled I dismiss the tenant's request to cancel the Notice and I provide the landlords with an Order of Possession.

The Notice to End Tenancy has a stated effective date of January 30, 2012 which is non-compliant with the Act. The effective date is automatically changed to read January 31, 2012 pursuant to section 53 of the Act. Therefore, I provide the landlords with an Order of Possession effective at 1:00 p.m. on January 31, 2012 to serve upon the tenant and ensure vacant possession is returned to the landlords.

Monetary claim

The landlords have an obligation under section 32 of the Act to provide the tenant with a rental unit that complies with health, safety and building standard laws; and, to provide a unit that is suitable for occupation by the tenant.

Section 7 of the Act provides that where a party breaches a requirement under the Act, the non-compliant party must compensate the other party for damages or loss that result from the violation. However, section 7(2) also requires that a party making a monetary claim must do whatever is reasonable to minimize their damage or loss.

It is important to note that the party that makes a monetary claim bears the burden of proof. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Without making a determination whether the temperature of the hot water was so low that it violated the law or made the unit unsuitable for occupation, I find the tenant's monetary claim problematic for a number of reasons. Firstly, I found her testimony inconsistent and unlikely. For example: the tenant submitted that the landlords restricted hot water to only her unit, which she has lived in for 3.5 years, yet she claimed compensation for a total of 7 years, including years she lived upstairs with the landlord.

Secondly, I found the tenant's 18 page written submission was largely unorganized and included all sorts of issues unrelated to the issue of hot water. I found the relevance of the written submissions to be unclear and that it did not provide additional evidence to corroborate the tenant's position with respect to having inadequate hot water.

Thirdly, the tenant submitted that she has endured insufficient hot water for a total of 7 years, yet the tenant did not put a request for repairs in writing or make an Application for Dispute Resolution until she received a Notice to End Tenancy. I find it reasonable to expect that if a tenant has not received sufficient response from a landlord for a verbal request to make repairs, the tenant would put the request in writing and/or make an Application for Dispute Resolution seeking repair orders. Therefore, I find the tenant did not take reasonable action to limit the damage or loss in a timely manner and the tenant is not entitled to compensation for the time period she is seeking.

In light of the above, I dismiss the tenant's monetary claim against the landlords.

Landlord's entry

With respect to the landlord's restricted right to enter the unit, I make no finding as to whether the landlord did in fact enter the tenant's unit illegally. However, I caution the landlords that their right to access the unit is restricted by the Act. Accordingly, I ORDER the landlords to comply with section 29 of the Act herein after. Section 29 provides:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

The tenancy shall end January 31, 2012 and the landlord has been provided an Order of Possession effective that date.

The tenant's monetary claim has been dismissed without leave to reapply.

The landlord has been ordered to comply with section 29 of the Act.

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: January 12, 2012.

Residential Tenancy Branch