



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, PSF, RR, MNDC, OLC, AAT, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a Two Month Notice to End Tenancy be cancelled; that the Landlord be ordered to comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, provide services or facilities required by law, allow access to or from the unit or site for the Tenant or the Tenant’s guests; and a monetary order for rent reduction, compensation for damage or loss and reimbursement for the filing fee.

Both parties appeared, gave affirmed testimony 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.

Preliminary Matter(s)

Allow access to or from the unit or site for Tenant or the Tenant’s guests

The Tenant and the Landlord agreed to resolve their issues with regards to the parking and the laundry after the hearing. As a result, I grant the Tenant liberty to reapply for these issues if they do not get resolved by the parties.

Monetary order for compensation for damage or loss

The Tenant has claimed compensation for registered mail costs \$20.00 and 10 hours of her time for discomfort and stress advocating for herself and preparing for claim estimated at \$250.00. The Act does not apply to mailing costs, advocacy costs, or costs relating to preparing for the claim. As a result I am dismissing the Tenant’s claim for these amounts.

Rent reduction claimed for lack of heat

The Tenant is claiming \$12.08 for five days of reduced heat which she states are based on the utilities paid in prior months. The Tenant stated that the Landlord has not been forthcoming with copies of the utility bills. The Landlord stated that the Tenant can see

a copy of the bills anytime she asks for them. As the parties have not provided copies of the utilities bills into evidence, it would be difficult to calculate any reduction in rent based on reduced utilities paid for by the Tenant. I am dismissing the Tenant's request for reduced rent for lack of heat with liberty to reapply. I order the Landlord to provide the Tenant photocopies within 15 days of all utility bills for the rental unit that cover the eleven month period January 01, 2011 to January 31, 2012.

Issue(s) to be Decided

Should the two Month Notice to End Tenancy be cancelled?

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, and provide services or facilities required by law and is the Tenant entitled to a rent reduction at this time?

Is the Tenant entitled to the filing fee for the Application?

Background and Evidence

The parties agree that they have a written tenancy agreement which started April 01, 2010, which is currently a month to month tenancy with a rent of \$675.00 per month. The rent is due before the Landlord's last business day of each month, and the Landlord defines their business days as Monday through Saturday. The parties agree that a security deposit of \$337.50 was paid by the Tenant when the tenancy commenced. The parties agree that the Tenant is renting one of the lower rental units in a fourplex operated by the Landlord. The parties agree that the Tenant pays 25% of the utility bill.

The Tenant filed her initial Application on January 24, 2012 and then filed an amended Application on February 02, 2012 to add their dispute of the Two Month Notice to End Tenancy, which was posted on the door of the rental unit on January 26, 2012.

Two Month Notice to End Tenancy for Landlord's Use of Property

The parties agree that the Landlord posted a Two Month Notice to End the Tenancy at the rental unit on January 26, 2012 although the Notice is dated January 25, 2012. The Two Month Notice to End Tenancy states that the Landlord's reason for issuance is, "the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant". The Landlord stated that the Tenant has complained to them about noise and heat issues in the fourplex. The Landlord stated that although the neighboring tenant who caused the noise has given notice and is moving out, that this will only temporarily resolve the noise issue and renovations are needed to resolve future noise complaints. The Landlord stated that a City inspector had examined the fourplex and has made

recommendations to the Landlord regarding possible renovations they could make to improve the party walls and ceilings between suites. The Landlord provided a copy of the recommendations of the City inspector into evidence. The Landlord stated that the City inspector did not make any orders as the current building code requirements do not apply to the fourplex. The Landlord stated that they do not require any permits to do the renovations, but that they would like the end the Tenant's tenancy so that they can install better drywall and insulation to improve the soundproofing in the party wall between the downstairs rental units. The Landlord stated that they have no plans to renovate the ceilings, just the party wall between the downstairs rental units. The Landlord stated that they are planning to do the work themselves between April and May and that they have carpentry and renovation experience. The Landlord stated that although the work is not urgent that this is the best time to do the work as the other downstairs tenant is vacating. The Landlord is seeking an end to the tenancy. The Landlord has not filed an application for dispute resolution.

The Tenant stated that she had made noise complaints to the Landlord, but that this only related to the current neighboring tenant, and not to past neighboring tenants. The Tenant she is aware the walls between the rental units are thin, but that she has never had an issue with prior tenants as they were respectful with regards to not making excessive noise and to being quiet at night. The Tenant stated that the current neighbor has made excessive noise at night and she tried to resolve it with him directly and with his social worker/care worker, but when that failed she made a formal complaint to the Landlord and to the City. The Tenant stated does not wish to move out and that if the Landlord feels the renovations are necessary she could stay with friends temporarily while the work is done and the Landlord could reduce her rent accordingly due to the inconvenience. The Tenant requests that the Two Month Notice to End Tenancy be cancelled.

Comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, provide services or facilities required by law

The Landlord stated that there is a dispute about the heat between the Tenant and her neighbor above. The Landlord stated that heat rises and the above tenant complains that the Tenant below kept the heat on too high and windows needed to be opened due to the excess heat. The Landlord also stated that the upstairs tenant was trying to block the vents that provide the heat so that she would not get too warm and this could have damaged the furnace due to overheating if it continued. The Landlord stated that to resolve the issue they removed control of the heat from the Tenant below and gave control to the tenant above on January 20, 2012. The Landlord stated that they have asked the tenant above to keep the heat on at 70 degrees at all times. The Landlord stated that they feel that the heat being on at 70 degrees is fair to all tenants. The Landlord acknowledges that their heating system is older and each side of the fourplex has their own furnace system shared between two units upper and lower with forced air

heating through vents. The Landlord stated that they have no plans to replace the heating system as it has been inspected recently and it still functions.

The Tenant stated that the heat she is receiving in her rental unit is several degrees lower than the heat received by the tenant in the upstairs rental unit, and that the Landlord's current heating system provides inconsistent heat to the rental units in the building. The Tenant stated that even if the heat is put on upstairs and measures 70 degrees in the upstairs tenant's suite, it will not measure 70 degrees in the downstairs, as heating system is not sensing that the downstairs suite is colder. The Tenant provided photographic evidence that the temperate gauge in her rental unit measures 62 degrees to 64 degrees on average since the Landlord took away her ability to control the heat and gave control to the upstairs tenant. The Tenant stated she and her children are cold and the Landlord should not have disabled her ability to adjust the temperate in the cooler months of the year. The Tenant is requesting an order to the Landlord to either restore control of the heat to her or to maintain a consistent temperature in the rental unit of a minimum of 70 degrees.

Analysis

I have considered all relevant testimony and evidence, and on a balance of probabilities, I find as follows:

Two Month Notice to End Tenancy for Landlord's Use of Property

I accept the parties' evidence that the Tenant was served with the Two Month Notice to End Tenancy on January 26, 2012 by posting it on the door of the rental unit. I find that the Tenant filed an Application to dispute the Notice within the timeframes allowed by the Act.

I find that the Two Month Notice to End Tenancy for Cause was not issued in accordance with the Act and Policy Guideline. The Landlord's evidence did not support that the renovations they are wishing to do are in accordance with the requirements of section 49 of the Act. The Landlord stated that they have not been ordered by the City or required by law to do the renovations and that the renovations are not urgent; rather they are choosing to do the renovations as this is an opportune time as the neighboring rental suite is vacant. The Landlord also stated that they do not require permits and they plan to do the renovations themselves. The Landlord described the renovations as improving a party wall between suites to make it more soundproof, by using better drywall and more insulation.

Based on the above-mentioned reasons, I order that the Two Month Notice to End Tenancy, served on January 26, 2012, be cancelled.

Comply with the Act, regulation or tenancy agreement, make repairs to the unit, site or property, provide services or facilities required by law

I accept the Tenant's testimony and evidence, including photographs provided, that the heat she is receiving in her rental unit is several degrees lower than the heat received by the tenant in the upstairs rental unit, and that the Landlord's current heating system provides inconsistent heat to the rental units in the building. I find that the Tenant's request to maintain a consistent temperature in the rental unit of a minimum of 70 degrees is reasonable. As a result, I order the Landlord within 15 days to ensure that the heat level in the Tenant's rental unit measures at least 70 degrees on a consistent basis. I allow the Landlord to either fully restore control of the heat of the rental unit to the Tenant or alternately the Landlord may install a heat control device controlled and programmed by the Landlord to ensure that the heat level in the Tenant's rental unit measures at least 70 degrees fahrenheit on a consistent basis.

As the Tenant has been partially successful in her Application, I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from her next rent payment due, so that the Tenant only pays \$625.00 for that month.

Conclusion

The Tenant's claim for access to or from the rental unit, parking or laundry is dismissed with liberty to reapply.

The Tenant's claim for registered mail costs \$20.00 and time, discomfort and stress advocating for herself and preparing for claim estimated at \$250.00 as compensation for damage or loss is dismissed.

The Tenant's request for an order to the Landlord regarding access to or from the unit or site for Tenant or the Tenant's guests is dismissed.

The Tenant's request for reduced rent for lack of heat is dismissed with liberty to reapply.

I have granted the Tenant's request to cancel the Two Month Notice to End Tenancy.

I order the Landlord to provide the Tenant photocopies within 15 days of all utility bills for the rental unit that cover the eleven month period January 01, 2011 to January 31, 2012.

I order the Landlord within 15 days to ensure that the heat level in the Tenant's rental unit measures at least 70 degrees fahrenheit on a consistent basis. I allow the Landlord to either fully restore control of the heat of the rental unit to the Tenant or alternately the

Landlord may install a heat control device controlled and programmed by the Landlord to ensure that the heat level in the Tenant's rental unit measures at least 70 degrees fahrenheit on a consistent basis.

I have granted the Tenant's request to recover the \$50.00 cost of the Application fee, and ordered her to deduct it from her next month's rent.

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: March 05, 2012.

Residential Tenancy Branch