



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause, and for an order that the landlord make repairs to the unit, site or property.

The tenant attended the conference call hearing with an advocate and a social worker to assist. Despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on February 25, 2012, no one for the landlord attended. The tenant provided a copy of a Canada Post receipt dated February 25, 2012 and a copy of the registration ticket from Canada Post to prove such service, and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*.

The tenant gave affirmed testimony and provided evidence in advance of the hearing. All evidence and testimony have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Background and Evidence

The tenant testified that this month-to-month tenancy began in November, 2004 and the tenant still resides in the rental unit. Rent in the amount of \$576.83 is payable in advance on the 1st day of each month, although there is no written tenancy agreement, and there are no rental arrears.

The tenant further testified that the landlord served the tenant personally on February 17, 2012 with a 1 Month Notice to End Tenancy for Cause. The landlord and an assistant of the landlord had attended the rental unit stating that required repairs to the

bathroom needed to be assessed. While the landlord was in the bathroom of the rental unit, the assistant handed the tenant the notice to end tenancy which was already prepared. A copy of the notice was provided for this hearing and it is dated February 17, 2012 and contains an effective date of vacancy of March 31, 2012. The reasons for issuing the notice are stated to be:

- 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
 - Put the landlord's property at significant risk
- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site

The tenant testified that the landlord has found the tenant's rental unit to be cluttered, but the tenant has not seriously jeopardized the health or safety or lawful right of another occupant or the landlord, nor has the tenant damaged the rental unit or put the landlord's property at significant risk.

The tenant further testified that there have been 2 floods in the bathroom of the rental unit, and as a result, water surrounded the ceramic tiles and they started to smell. The tiles have dried now, but the grout in the ceramic tiles has become loose. The bathroom also requires other repairs, such as a towel rack which has come off the wall. Also the tiles are coming loose around the faucet in the bathtub; the grout around those tiles has disintegrated, and some were cracked when the tenant moved into the rental unit. The caulking has come off between the tiles and the tub on all three walls around the bathtub, and a hole exists in the wall beside the bathtub. The hole was not caused by the tenant, and has become larger over time. Photographs of the repairs required have also been provided. The tenant requests an order that the landlord make those repairs, and that the landlord make the repairs in such a manner that the work be completed shortly after it begins to prevent the tenant from having to be without a bathroom for a lengthy period of time. The bathroom is 6 feet by 6 feet in dimension.

The tenant also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which the landlord served on the tenant. The notice is dated March 3, 2012 and contains an expected date of vacancy of March 14, 2012. The tenant testified that the rent was paid in full by way of cheque on February 29, 2012. When asked why the landlord would issue a notice to end tenancy if the rent was paid, the tenant testified that the landlord likely thinks the cheque is a third party cheque because the tenant has another name and the cheque was drawn on an account under that name. The landlord has still not cashed that cheque.

Analysis

Firstly, with respect to the tenant's application for an order cancelling a notice to end tenancy for cause, I have no evidence from the landlord to justify the issuance of the notice. The tenant has testified that there is no basis for issuing the notice. The *Residential Tenancy Act* states that a tenant who receives a notice may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice, and if the tenant does not make that application, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. In this case, the tenant testified that the notice was served personally on February 17, 2012 and the tenant's application was filed on February 21, 2012, which I find is within 10 days. The landlord was served with the tenant's application by registered mail on February 25, 2012, which is deemed to have been served 5 days after mailing, or on March 1, 2012. The landlord did not attend the hearing to ask that the notice to end tenancy be upheld, and I have no evidence before me to justify that the notice be upheld, and I therefore cancel the notice.

With respect to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, I have no application before me by the landlord to uphold the notice, nor an application from the tenant to cancel the notice, and therefore, I decline to make any orders with respect to that notice. The tenant was told during the course of the hearing that I cannot deal with that notice without an application, however, the *Residential Tenancy Act* states that within 5 days after receiving the notice, the tenant may pay the overdue rent, in which case the notice has no effect. There is nothing in the *Act* that prevents another person from paying the tenant's rent, nor is there anything in the *Act* preventing the tenant from paying the rent on an account in a different name. I would suggest that the landlord should cash or deposit the cheque.

With respect to the tenant's application for repairs, the *Residential Tenancy Act* states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and make the rental unit suitable for accommodation by a tenant. The *Act* also states that the landlord must do so even if the tenant knew of repairs required at the time of entering into the tenancy agreement. I find that a bathroom is a necessary room in any rental unit, and the landlord has a responsibility to make repairs to that room. I further find that the repairs ought not to take a long time to effect on a room that is 6 feet by 6 feet in dimension, and I order the landlord to make the repairs described by the tenant by the end of March, 2012. If the landlord fails to do so, the tenant will be at liberty to

make a further application for dispute resolution which could result in a monetary order against the landlord or a reduction in rent for breaching this order. I further find that once the repairs have commenced, the landlord ought to finish the repairs within a timely manner in order to prevent the tenant from being without a bathroom or otherwise inconvenienced for a lengthy period of time. The tenant has requested an order that the landlord complete those repairs within 1 ½ weeks of commencement, and I find that to be reasonable in the circumstances.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause issued on February 17, 2012 is hereby cancelled.

I hereby order the landlord to make repairs to the bathroom of the rental unit as follows:

- Re-attach the towel rack to the wall;
- Repair the loose tiles around the faucet in the bathtub;
- Re-calk the walls of the bathtub between the walls and the bathtub;
- Repair the hole in the wall beside the bathtub; and
- Replace the ceramic tiles on the bathroom floor and refinish that floor.

I further order that the above repairs be completed by March 31, 2012, and that once the repairs have been commenced, the landlord must complete those repairs within 11 days. If the landlord fails to complete those repairs as ordered, the tenant will be at liberty to make a further application for dispute resolution.

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 09, 2012.

Residential Tenancy Branch