



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, RP

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord make repairs to the unit, site or property.

The landlord and the tenant attended the hearing, gave affirmed testimony and provided evidence in advance of the hearing to the Residential Tenancy Branch and to each other. The parties both called a witness, however only the tenant's witness gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the testimony given and the evidence provided, all of which has been reviewed and is considered in this Decision.

The hearing did not conclude on the first day and was adjourned to continue. Both parties again attended, however the landlord did not remain in attendance for the entire hearing. The parties entered into a heated argument during the hearing and were lectured regarding interruptions and behaviour, after which time the landlord hung up the phone. The hearing continued with the tenant, in the absence of the landlord.

Issue(s) to be Decided

- Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Background and Evidence

This month-to-month tenancy began on May 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$650.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is

still held in trust by the landlord. The landlord also collected a pet damage deposit from the tenant in the amount of \$100.00. The rental unit is a basement suite in a house and the landlord resides in the upper unit.

The tenant testified that the landlord served the tenant with a 2 Month Notice to End Tenancy on February 29, 2012 and the parties agreed during the course of the hearing that the notice is cancelled.

Further, during the course of the hearing the tenant withdrew the application for an order that the landlord make repairs to the unit, site or property, and I find it unnecessary to outline any of the evidence relevant to that application.

The tenant testified that the landlord complains when the tenant has guests. The tenant's friend and grandchildren visit, and the tenant wishes a home environment to visit with the guests without interruption or complaint by the landlord. The tenant and guests are quiet but there is no proper insulation between the suites, and the landlord has been rude and calls the tenant profane names.

The landlord testified that the tenant was asked a lot of questions before the parties agreed to the tenancy because the landlord wanted the right tenant. The tenant's grandchildren visit and the tenant's friend stays at the rental unit several nights per week. The landlord stated that the noise from the rental unit is disturbing to the landlord and the landlord's family.

Analysis

The *Residential Tenancy Act* states:

- 30** (1) A landlord must not unreasonably restrict access to residential property by
- (a) the tenant of a rental unit that is part of the residential property, or
 - (b) a person permitted on the residential property by that tenant.

I have heard no evidence of any reason to restrict access to the residential property by the tenant's guests. The *Act* also states that a tenant is entitled to quiet enjoyment of the tenant's rental property. If the landlord feels that the landlord has cause to evict the tenant, the landlord must do so in compliance with the *Residential Tenancy Act*. If the landlord fails to comply with Section 30 as described above, the tenant may be in a position to make a monetary claim against the landlord. Further, if the landlord issues another 2 Month Notice to End Tenancy for Landlord's Use of Property, it's important for

the landlord to know that the landlord must provide the tenant with at least 2 month's notice and must provide the tenant with the equivalent of one month's rent. That is often done by providing the tenant with free rent for the last month of the tenancy. However, once served with the notice, the tenant may move from the rental unit earlier than the 2 months by giving the landlord at least 10 days written notice and must pay rent up to that date. The landlord is still required to give the tenant the equivalent of one month's rent. Further, the landlord must use the rental unit for the purpose set out in the notice for at least 6 months or may be liable to pay the tenant double the amount of the monthly rent.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy served on the tenant on February 29, 2012 is cancelled, by consent.

The tenant's application for an order that the landlord make repairs to the unit, site or property is hereby dismissed, as withdrawn by the tenant.

I hereby order the landlord to comply with the *Residential Tenancy Act* by not interfering with the tenant's guests and by providing the tenant with the right to quiet enjoyment.

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: April 13, 2012.

Residential Tenancy Branch