



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: CNC, CNR, MNDC, OLC, ERP, RP, FF

Introduction

This matter was convened to hear the Tenants' application to cancel a Notice to End Tenancy for Cause; to cancel a Notice to End Tenancy for Unpaid Rent; for an Order that the Landlord comply with the Act, Regulation or tenancy agreement; for Orders that the Landlord make regular and emergency repairs to the rental unit; for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

This Hearing began on April 20, 2012, during which time the Landlord provided her submissions and evidence. The Hearing was adjourned to reconvene on May 15, 2012, in order that the Tenants could provide their submissions and evidence. An interim Decision was made, which should be read in conjunction with this Decision.

The parties gave affirmed testimony at the Hearing.

Preliminary Matter Regarding the Notice to End Tenancy for Unpaid Rent

The Landlord testified that monthly rent is \$1,125.00. She testified that the Tenants were short \$16.00 for March's rent and did not pay any of April's rent. She testified that she issued a Notice to End Tenancy for Unpaid rent on April 3, 2012, and served the Tenants by posting the Notice to their door on April 4, 2012. The Notice alleged that the Tenants owed \$1,140.00 in unpaid rent.

The Tenants agreed that they owe rent in the amount of \$1,140.00, but stated that the Landlord's practice was to collect the rent from the Tenants and that she didn't pick it up. The Tenants testified that they have the money and have told the Landlord that they have the money but she refused to pick it up. The Tenants testified that they did not have an address for the Landlord until March 31, 2012.

The Landlord agreed that it was her practice to pick up the rent from the Tenants, sometimes the last day of the month before rent is due, sometimes the first of the month, and sometimes a couple of days later. She denied that she had refused to pick up the rent and stated that the Tenants told her they would not pay rent because she had issued the Notice to End Tenancy for Cause on March 31, 2012.

I made an Order in my interim Decision that the Landlord pick up the unpaid rent from the Tenants at noon on April 21, 2012. I advised the parties that this payment would not reinstate the tenancy, but would be for use and occupancy only until a determination was made with respect to the validity of the Notices to End Tenancy.

At the reconvened Hearing it was determined that the Tenants have paid the amount owing for March and April, 2012, and also have paid rent for the month of May, 2012.

I find that the Notice to End Tenancy for Unpaid Rent issued April 3, 2012, is not a valid notice. No copy of a tenancy agreement was provided in evidence, indicating on what day rent was due. In any event, the Landlord's practice was to pick up rent from the Tenants (on varying days of the month). The Tenants did not have an address for the Landlord until March 31, 2012, and therefore I find that the non-payment of rent was as a result of the Landlord's actions.

The Notice to End Tenancy for Unpaid Rent issued April 3, 2012, is cancelled. The Tenants are cautioned that the onus is on them to provide the Landlord with any future rent due and not upon the Landlord to collect the rent.

Issues to be Decided

- Should the Notice to End Tenancy for Cause issued March 31, 2012, be cancelled?
- Are the Tenants entitled to compensation for damage or loss?
- Should the Landlord be ordered to comply with the Act and make regular and emergency repairs to the rental unit?

Background and Evidence

The Landlord provided the following testimony:

The Landlord testified that the Tenants damaged the door to the rental unit. She stated that the male Tenant locked himself out and kicked the door and used a spade in order to gain access to the rental unit.

The Landlord testified that the Tenants bang on the ceiling of the rental unit, disturbing the occupants above the Tenants. She testified that the Tenants also curse at the upstairs occupants (the "Complainants") and make noise, which disturbs the Complainants.

The witness JE testified that she lives in another suite at the rental property and that the Landlord asked her to give testimony but she has never been disturbed by the Tenants. She stated that the Tenants have blamed the Complainants about breaking some lights at the rental unit, but her dog broke the lights. The witness stated that one night the Tenants flipped the breaker, causing a power outage, but that she was not sure if it was on purpose. The witness testified that the Tenants' door does not close properly and hasn't closed properly since the witness moved into the rental property in December, 2011. She stated that she was visiting the Complainants one day and witnessed the male Tenant and the male Complainant shouting at each other.

The witness LR is one of the Complainants. She stated that she saw the Landlord returning the security deposit to the previous occupants of the rental unit, so she knows that the previous occupants did not do any damage to the rental unit. She testified that she was present when the male Tenant used a shovel to pry the door open and that he nailed the frame shut afterwards. The witness testified that the Tenants always slam their door which disturbs the Complainants.

The witness LR testified that one evening, while they were watching TV, the Tenants turned their power off. She stated that she called the police and the Landlord and the power came back on one hour later. The witness testified that the female Tenant apologized the following morning, saying that she had a migraine and that the TV was too loud. The witness stated that the Complainants are quiet people and that it is the Tenants who are loud, turning up their music, banging on the ceiling and slamming doors. The witness stated that the Tenants do not pick up after their two dogs and that her husband (who is the primary gardener at the rental property) is often faced with cleaning up their dogs' feces before he mows the lawn.

The Landlord testified that the Tenants have no regard for other occupants' right to peaceful enjoyment, do not pay their rent on time, and continue to do damage to the rental unit.

The Tenants provided the following testimony:

The male Tenant testified that the door was already damaged when the Tenants moved into the rental unit and that the Landlord attempted to fix it by putting weather stripping on the door. He stated that the door does not close properly and that he has come home to find it wide open. The Tenant stated that he has to slam the door in order for it to stay closed. The male Tenant testified that there was no Condition Inspection Report completed at the beginning of the tenancy.

The male Tenant stated that he was locked out of the house and that he could not get a hold of the Landlord. He testified that the Complainants used to be friends with the Tenants and that the male Complainant helped him to pop open the door so he could get into the house.

The male Tenant testified that one day the male Complainant came to see him and was upset because he had been told that the female Tenant called him a derogatory name. The male Tenant stated that the female Tenant did not do so, but the male Complainant did not believe him. The male Tenant stated that after that conversation the male Complainant started interrupting him and arguing with him in front of his friends, interrupting personal conversations when they were outside. He stated that the male Complainant started playing movies after 11:00 p.m. at night and called the Tenants racist names. However, the Tenant testified, the male Complainant apologized to the male Tenant a couple of weeks ago.

The male Tenant testified that there are other dogs that live in the rental property that are owned by other occupants and that the other dog owners do not clean up after their pets.

The male Tenant stated that they gave the Landlord notice in writing of the things that required repair on February 15, 2012. The Tenant submitted that the Landlord issued the Notice to End Tenancy for Cause in order to get out of fixing things in the rental unit.

The female Tenant testified that the front door and the back door are broken; there is no cover for the power box; and the plumbing is bad and getting worse. She stated that dirty water backs up through the kitchen sink, laundry and bathtub and the toilet overflowed causing the drywall to rot. The female Tenant testified that the rental unit is in need of fresh paint. The Tenants provided photographs in evidence.

The female Tenant testified that the power box for both the Complainants and the Tenants is located in the rental unit and that she unknowingly turned off the power when she was trying to reset the breakers. She stated that there is no indication on the box which switch controls which breaker and so the Complainants power was off for about 10 minutes while she tried to figure it out. The Tenant testified that she has apologized for the incident, and that it was unintentional.

The Landlord gave the following reply:

The Landlord testified that the door had only a hairline crack in it at the beginning of the tenancy. She stated that the power box used to have a cover on it and that the Tenants must have removed it.

The Landlord testified that there is nothing wrong with the plumbing in the rental unit and there is no indication of any rot in the drywall.

Analysis

Regarding the Tenants' application to cancel the Notice to End Tenancy for Cause:

When a tenant seeks to cancel a notice to end tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons contained in the notice. In this case, the Notice to End Tenancy for Cause discloses the following reasons to end the tenancy:

1. Tenant is repeatedly late paying rent.
2. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
3. Tenant has caused extraordinary damage to the rental unit.

Because of the Landlord's prior practice of picking up the rent on varying days, I find that the Landlord did not provide sufficient evidence of when the rent was due under the tenancy agreement. Therefore, I find that she has not proven the first cause on the Notice. However, the parties agreed that the Tenants would pay rent to the Landlord, on the first day of each month. Therefore, **I find that future rent is due on the first day of each month.**

The Tenants and the Complainants each blame the other for noise disturbances and other interference. The Landlord was not at the rental property when the occurrences took place. Her independent witness, JE, did not provide sufficient evidence that the Tenants significantly interfered with or unreasonably disturbed other occupants or the landlord. Therefore, I find that the Landlord has failed to provide sufficient evidence for this cause to end the tenancy.

I find that the Landlord has also failed to provide sufficient evidence that the Tenants have caused extraordinary damage to the rental unit. The Tenants allege that the door was already compromised at the beginning of the tenancy, the Landlord stated that it was just a "hairline fracture". There was no Condition Inspection done at the beginning of the tenancy, which is the responsibility of the Landlord, and therefore no documentary evidence of the condition of the door at the beginning of the tenancy. In any event I do not find the breaking of a door jamb constitutes "extraordinary damage". Therefore, I find that the Landlord has failed to provide sufficient evidence for this cause to end the tenancy.

The Tenants' application to cancel the Notice to End Tenancy for Cause is granted. The Notice is of no force or effect and the tenancy will continue until it is ended in accordance with the provisions of the Act.

Regarding the remainder of the Tenants' application:

Section 32 of the Act states:

Criteria Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Landlord was required by Section 23 of the Act to perform a move-in condition inspection with the Tenants. This was not done and therefore there is no documentary evidence of the state of repair of the rental unit at the beginning of the tenancy. The photographs provided by the Tenants show a back-up of bubbling, dirty water in the laundry sink; a broken window covered with newspaper; holes in the walls and ceiling; an electric panel with no cover or labeling; a damaged door; a cracked glass patio door; and plaster patches which have not been sanded or painted. Based on the photographs provided, I find that the Landlord has not complied with Section 32 of the Act and **I hereby order the Landlord to comply with Section 32 of the Act** and:

- Repair and paint the interior walls, ceilings and trim;
- Replace the door and replace or repair the door jamb;

- Have a professional plumber investigate the problem with the plumbing and make recommended repairs. I also order the Landlord to provide the Tenants a copy of the plumber's report ;
- Label and cover the electrical panel; and
- Replace the broken window and the broken glass patio door.

I order that the above mentioned repair and maintenance issues be completed by October 1, 2012.

Section 65(1)(f) of the Act allows me to reduce past or future rent by an amount that is equivalent to a reduction in the value of a tenancy agreement. I find that the Tenants provided insufficient evidence to establish a monetary award in the amount of \$1,000.00. However, I find that the Landlord has neglected to comply with Section 32 of the Act and that the Tenants have suffered a loss of the value of the tenancy agreement as a result. Therefore I allow rent reduction in the amount of **\$75.00**, until the repairs and maintenance set out above are completed and the Landlord is successful in an application to have the rent reduction stopped.

The Tenants have been partially successful in their application and I find that they are entitled to recover the cost of their filing fee in the amount of **\$50.00**. This amount may be deducted from future rent due to the Landlord.

For clarity, rent for the month of July, 2012 will be \$1,000.00 (\$1,125.00 - \$100.00 rent reduction - \$50.00 filing fee.), and for subsequent months will be \$1,050.00 until the Landlord is successful in an application to have the rent reduction stopped.

Conclusion

The Tenants' application to cancel the Notice to End Tenancy for Cause issued March 31, 2012, is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I Order the Landlord to comply with Section 32 of the Act and make repairs to the rental unit as set out above, by October 1, 2012.

I find that rent is due on the first day of each month.

I Order that there will be a rent reduction of \$75.00 per month until the repairs and maintenance set out above are completed and the Landlord is successful in an application to have the rent reduction stopped.

I Order that the Tenants may deduct the cost of the \$50.00 filing fee from future rent due.

For clarity, rent for the month of July, 2012 will be \$1,000.00 (\$1,125.00 - \$100.00 rent reduction - \$50.00 filing fee.), and for subsequent months will be \$1,050.00 until the Landlord is successful in an Application for Dispute Resolution to have the rent reduction stopped.

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: May 30, 2012.

Residential Tenancy Branch