



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, OLC, LAT, MNDC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside the notice to end tenancy for unpaid rent and for a monetary order for compensation. The tenant also applied for an order directing the landlord to comply with the *Act* and allow the tenant to change locks. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have reason to end the tenancy or should the notice to end tenancy be set aside and the tenancy be allowed to continue? Was the landlord negligent with regard to maintaining the rental property? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on December 15, 2009. The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size. The economic rent for this unit is \$1,042.00. Prior to October 2011, the tenant's portion after the subsidy was \$183.00 per month.

In September 2011, the tenant's income increased and upon filing for subsidy based on this new income, the tenant was notified that effective October 01, 2011, her portion of rent would increase to \$480.00. The tenant filed a copy of this notification. The tenant stated that she received the notification on October 17 and therefore did not pay the increase for October. Social Services covered the increase for November and December 2011, but as of May 15, 2012, the tenant still owed rent for October 2011.

On May 15, 2012, the landlord served the tenant with a 10 day notice to end tenancy for non payment of rent in the amount of \$372.00. Neither party filed a copy of the notice to end tenancy.

The tenant stated that since March 2010, she was having problems with the presence of mould in the rental unit. On March 03, 2010 the resident manager visited the unit with a representative of the utility company, to conduct an inspection on the energy efficiency of the rental unit. During this inspection, the tenant informed the resident manager of the mould problem. The manager returned three days later and followed a process that is the standard practice of the landlord when dealing with mould issues. The area was washed thoroughly with a mild bleach solution, allowed to dry and a sealant was painted over the area. The tenant was instructed on the use of fans and dehumidifiers and was also asked to keep a window slightly ajar for air circulation.

The landlord stated that in 2002, an excessive number of ventilation whirly birds were installed on the roof to ensure that the attics have free flowing air and in 2006, energy efficient windows and bathroom fans were installed in all rental units in the complex. The landlord also stated that this rental unit was painted in August 2011 and all weather stripping was replaced. In November 2011, repairs were done to the tenant's door and the tenant did not report any further problems. In addition the landlord stated that the tenant did not notify the landlord of any problems with mould except for a few verbal requests which were actioned in a timely manner.

The tenant agreed that the resident manager responded to her complaints and cleaned the area with a bleach solution. However, she stated that he attributed the level of humidity in the unit to the tenant's cooking and to the airtight windows. The tenant also agreed that the manger repaired the heating system in a timely manner.

The tenant stated that the presence of mould affected the health of both herself and her child thereby causing her a loss of quiet enjoyment. The tenant is claiming compensation for this loss in the amount of \$2,000.00. She also stated that she disposed of a large quantity of her personal belongings due to the presence of mould and is claiming compensation in the amount of \$3,488.42.

The tenant stated that one room in the unit was not usable due to the mould and is claiming the return of prorated rent for the period of November 2010 to June 2012 in the amount of \$1,126.54. The tenant withdrew her claims of \$1,803.20 for moving costs and \$6,744.00 for the return of rent. The tenant is also claiming \$175.00 for the cost of utilities when there was a problem with the heating. Overall the tenant is claiming \$6,789.96 as compensation for the problems associated with the presence of mould.

During the hearing, it was determined that the tenant owed rent in the amount of \$372.00.

The tenant agreed to pay the outstanding rent and the landlord agreed to reinstate the tenancy upon receipt of rent owed. The landlord agreed to allow the tenant up to July 15, 2012 to catch up on rent.

Analysis

Based on the sworn testimony of both parties, I find that the tenant is not entitled to monetary compensation for the following reasons:

1. The landlord responded to all the tenant's complaints in a timely manner and acted responsibly.
2. The alleged problem of mould started more than two years prior to the hearing. If the problem was significant, the tenant had the option of applying for an order directing the landlord to take action, but chose not to do so.
3. The tenant did not serve the landlord with any written complaints. The landlord expressed surprise at the tenant's application for compensation.
4. Upon applying to cancel the notice to end tenancy for nonpayment of rent, the tenant chose to include in her application, a monetary claim for an alleged problem that started more than two years ago.
5. The tenant has not proven negligence on the part of the landlord with regard to Section 32 of the *Residential Tenancy Act* and his responsibilities to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.
6. As decided by the parties during the hearing, the landlord will accept the overdue rent and will reinstate the tenancy. Accordingly the notice to end tenancy is set aside and the tenancy will continue.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant must pay \$372.00 to the landlord on or before July 15, 2012. The tenant's application for compensation is dismissed.

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: June 18, 2012.

Residential Tenancy Branch