



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, RP, FF, O

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 unpaid rent or utilities; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord company attended the conference call hearing and both gave affirmed testimony. The parties also provided evidence in advance of the hearing, however an evidence package provided by the tenant was not provided to the landlord. All evidence and testimony provided, with the exception of the evidence package not provided to the landlord, has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?
- 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

The landlord's agent testified that this month-to-month tenancy began on March 1, 2012. The rental unit is the upper floor and partial basement in a house that also contains another rental unit in the basement. Rent in the amount of \$1,200.00 per month is payable in advance on the 1st day of each month. The landlord company was not the landlord at the commencement of the tenancy and the landlord's agent was not a property manager of the rental house until sometime in May, 2012, however the landlord's agent testified that any security deposit paid by the tenant was used by the tenant for professional carpet cleaning with the consent of the landlord at the time.

The landlord's agent further testified that the tenant has paid all rent, however the landlord relies on paragraph 8 of the tenancy agreement which states:

(8) APPLICATION OF MONIES:

All monies collected, including rent payments, will be applied first to outstanding fees and charges, and any remaining amounts will then be applied towards rent.”

The landlord’s agent testified that the company manages many rental units and it would not be feasible for an agent of the landlord company to personally attend rental units for repair requests made by tenants. On 3 occasions the tenant called the landlord’s agents for repairs that were not required and the landlord’s agents find it reasonable to rely on tenants to check the breaker box prior to requesting repairs. The landlords use a checklist for repair requests, and on the first occasion, the landlord’s agent used the checklist when the tenant called to report that the suite in the lower portion of the house had no power. That rental unit depends on a breaker box that is located in the upper portion of the house. The tenant was asked by the tenant in the lower level to check the breaker, the tenant called the landlord’s agent, and assured the landlord’s agent that the breaker was okay. The landlord’s agent called out an electrician who found the breaker tripped and charged the landlord \$150.08 for the call-out.

On another occasion, the tenant called stating that the range was not working and again assured the landlord’s agent that the breaker was okay. An appliance repair person was called to the rental unit and found the breaker tripped. Again the landlord was charged \$100.80 for the call-out.

On the third occasion, the landlord’s agent testified that the tenant called stating that the washer and dryer were not working. An appliance repair person had been there and had made repairs prior, but determined that nothing was wrong with the appliances on this occasion. The repair person stated that the lint trap in the dryer was full which caused the dryer to stop functioning. The landlord was charged \$100.80 for that call-out.

The landlord has applied these charges to the amounts of rent paid by the tenant, and the tenant is now, therefore, in arrears of rent the sum of \$351.68.

The landlord’s agent provided the tenant with a letter dated May 24, 2012, and another dated June 7, 2012 which state that the call-outs for the appliance repair on May 2 and May 28, 2012 were unnecessary and therefore the tenant’s responsibility to pay the invoices in the amount of \$100.80 each. Another letter dated May 23, 2012 was provided requesting that the tenant pay \$150.08 for the electrician call-out on April 26, 2012. Copies of the letters and invoices were provided in advance of this hearing.

The landlord's agent also testified that breaker boxes are all standard and at a height to be easily accessible, and the landlord's agent, who is 5' 10" tall would be near eye level to the breaker switches on the sub-panel.

On June 7, 2012 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided for this hearing. The notice is dated June 7, 2012 and states that the tenant failed to pay rent in the amount of \$351.68 that was due on June 1, 2012, and contains an expected date of vacancy of June 22, 2012. The landlord's agent testified that the notice was sent to the tenant by registered mail on June 7, 2012.

The landlord's agent also testified that the tenant has not made any recurring requests of the landlord respecting skunks. Further, the parties had discussions respecting blinds in the rental unit, which have been ordered.

The tenant testified that the tenancy began on or about May 23, 2011 and the property management company took over as landlords in March, 2012.

The tenant in the basement suite had told the tenant that his fridge wasn't working, and both tenants checked the breaker box. The switch would not go back into position, and the panel box is over the tenant's head. When the tenant called the landlord's agent, the landlord's agent asked if the tenant had checked the breaker, which the tenant had. The landlord's agent didn't have a key for the contractor and couldn't get into the rental unit. Afterwards, the landlord's agent asked the tenant to get a key cut.

On the second occasion the tenant's oven wasn't working. It seemed to have power and all other appliances on that wall worked. The electrician went to the rental unit while the tenant was not at home. The electrician later called the tenant to advise that the breaker switch is hard to push.

The landlord sent the tenant the bills. The tenant testified that she doesn't know anything about electricity and panels, but did try the breaker switches. The tenant called the Residential Tenancy Branch for advice, and stated that the first call was for the tenant in the lower level, and the tenant tried to correct the breaker but was unable to. The tenant testified that the breaker switch was pushed to the right and then left, and explained several times to the landlord that it didn't work. The tenant is a petit, short woman and the breaker sub-panel is over her head.

The tenant further testified that clothing smells bad when it comes out of the washer. The tenant has tried using extra fabric sheets, and bars made by Tide to clean the machine, but nothing seemed to work. The dryer always takes 2 or 3 cycles to dry

clothing. The tenant called the appliance repair person who attended the rental unit after that call-out and explained that the lint trap is emptied regularly, but the tenant had just washed and dried some new towels which filled the lint trap. The repair person told the tenant that the dryer is old with a single heating element, and the appliance repair person had made an incorrect assumption about the lint trap, and stated that he will re-attend the rental unit for free to attempt a repair.

The tenant also testified that the landlords have been told of silverfish in the rental unit and skunks in the back yard. Further, the landlord's agents have promised blinds in the rental unit, the tenant has been very patient, and the tenant requests that repairs be made to the washer and dryer, and that the skunks and silverfish be removed. The tenant requests an order that the landlord comply with the *Act* and the tenancy agreement and that blinds be installed.

Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due, and in this case, there is no indication that the tenant has failed to comply; all rent has been paid by or prior to its due date.

The landlord's agent relies on paragraph 8 of the tenancy agreement that states that all monies paid, including rent payments, will be applied first to outstanding fees and charges. The *Act* states that landlords and tenants may not contract outside the *Act* and that any attempt to do so is of no effect. The *Act* also states that landlords may not include in a tenancy agreement any clauses that are unconscionable. In this case, I find that paragraph 8 in the tenancy agreement is unconscionable. The tenant does not owe any rent and the landlord is using paragraph 8 and a notice to end tenancy in an attempt to collect money from a tenant that has not been deemed to be owed. I therefore find that the notice to end tenancy should be cancelled.

In a situation, for example, where a tenancy agreement states that a tenant must pay a service fee for rent payments made after the date that rent is due under the agreement, and the tenant pays the current month's rent leaving an amount outstanding for the previous month, the landlord may not apply any portion of the current month's rent to the previous month in order to charge another late fee. In this case, the landlord may be successful with an application respecting monies owed to the landlord for call-outs that the landlord's agent finds were unnecessary, however, the application before me is with respect to the notice to end tenancy. I further note that if the breaker switches trip often, that may be an indication of a bigger electrical problem in the rental unit, which is not the responsibility of the tenant. The landlord's agent testified that the company

manages many rental units and it would not be feasible for an agent of the landlord company to personally attend rental units for repair requests by tenants.

The tenant has also requested an order that the landlord make repairs to the unit, being the washer and dryer as well as for blinds and to rid the property of skunks and silverfish. The tenant testified that the appliance repair person advised of an incorrect assumption respecting the service call and that he would be attending again without charge. The landlord testified that the blinds have been ordered. I find that both parties have done whatever is reasonable to maintain the rental unit and the tenancy. The landlord, however, has the burden of ensuring that the appliances in the rental unit are in good working order and that the rental unit is free of pests.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application. I hereby order the tenant to reduce a future month of rent by that amount.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled.

I hereby order the landlord to comply with Section 32 of the *Residential Tenancy Act* and effect repairs to, or replace the washer and dryer.

I further order the landlord to provide the tenant with the promised blinds in the rental unit by July 15, 2012. If the landlord fails to do so, the tenant will be at liberty to apply for a monetary order for the landlord's failure to comply with the tenancy agreement or this order.

I further order the landlord to rid the property of skunks and silverfish.

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: July 3, 2012.

Residential Tenancy Branch