



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNC; RP; RR; FF

Introduction

This is the Tenant's application to cancel a One Month Notice to End Tenancy for Cause issued August 17, 2012 (the "Notice"); the Tenant also requests an Order that the Landlord make repairs to the rental unit; a reduction in rent; and to recover of the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were provided to the Landlord by registered mail.

It was determined that the Tenant also provided the Landlord copies of his documentary evidence. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch, or to the Tenant.

Issues to be Decided

- Should the Notice be upheld or cancelled?
- Should the Landlord be ordered to make repairs to the rental unit?
- Is the Tenant entitled to a rent reduction and if so, in what amount?

Background and Evidence

The rental unit is a house with two suites of approximately the same size. The Tenant rents both suites from the Landlord. There is no written tenancy agreement, but the parties agreed that the tenancy began 20 years ago, in July or August of 1992. Current monthly rent is \$1,450.00, due on the first day of each month. The Tenant pays rent by post-dated cheques. The Tenant paid a security deposit in the amount of \$600.00 at the beginning of the tenancy.

The Landlord issued a Notice to End Tenancy for Cause on August 17, 2012 (the "Notice"). The Notice indicates the following reasons:

- Tenant is repeatedly late paying rent.
- Tenant has caused extraordinary damage to the rental unit.
- Tenant has assigned or sublet the rental unit without Landlord's written consent.

The Landlord testified that the Tenant was late paying rent in January, February, March, April, June, July and August of 2012. He referred to his tenant ledger and provided the actual dates that the rent was paid. The Tenant stated that he had been late paying rent over the course of the 20 year tenancy, but not as many times as the Landlord stated. He testified that he would call the Landlord and let him know the rent would be late and the Landlord never minded.

The Landlord testified that the Tenant has blocked the plumbing in both of the suites in the rental unit and that this caused a major flood in the basement. The Landlord stated that the Tenant does not take proper care of the plumbing. The Landlord stated that the plumbing was new in 1992.

The Tenant stated that the lower suite has flooded 5 times since 2007 and each time the Tenants had to rent a snake to unblock the toilet. The Tenant stated that he believes the weeping tiles around the house are in need of repair and that there are tree roots from his neighbour's bamboo trees that are compromising the building's structure. The Tenant provided copies of invoices for snake rentals and photographs of the rental unit in evidence.

The Tenant stated that on August 16, 2012, raw sewage backed up into the downstairs bathtub and overflowed on to the floor. The Tenant stated that no one was home at the time, so it was a while before anyone noticed the damage. The Tenant testified that he and his family have not had use of the lower suite since August 16, 2012 because the restoration company will not do any more work until the hazmat people can remove mouldy drywall. The Tenant stated that there are still two dehumidifiers running in the basement suite. He stated that the Tenants have been told not to turn on the furnace until the mould has been removed because it is unsafe to do so. The Tenant said that the chimneys have not been cleaned since the Tenant moved in 20 years ago.

The Landlord disagreed with the Tenant regarding the reason for the basement flood. He stated that the Tenants were abusing the water system in the upper suite by flushing their toilet when it was plugged and by not using the shower properly. The Landlord said that sometimes his son would attend to do maintenance at the rental unit, but that usually the Tenants did it. He stated that he gave the Tenant a payment in the amount of \$193.40 to compensate him for no water or toilet facilities for three days. He stated that he also repaid the Tenant for the cost of one of the snake rentals.

The Landlord stated that he always inspects the rental property when the Tenant tells him about problems. The Tenant stated that the Landlord doesn't do inspections or repairs. He stated that the Landlord's son came to repair plumbing a few years ago, opened up the walls to access the pipes and did not return to repair the walls. The Tenant stated that the Tenants needed a new door and the Landlord paid for a new door, but it didn't have a mail slot. The Tenant testified the Landlord told him to get the Tenant's son to put it in. The Tenant stated that the Landlord paid for the mail slot, but the Tenant had to install it and pay for renting a special saw to do the job.

The Landlord stated that the Tenant has sublet the basement suite without the Landlord's permission. The Tenant stated that for 20 years various combinations of his sons and their girlfriends have lived in the basement suite and that the Landlord was always aware that they were living there. The Tenant stated that after the August 16th flood, his son's ex-girlfriend moved out because it was the last straw.

Analysis

Should the Notice be upheld or cancelled?

When a tenant seeks to cancel a notice to end the tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reason(s) provided on the notice.

I find that the Landlord did not provide sufficient evidence to uphold the Notice for the following reasons:

- The Tenant disputed that he was repeatedly late paying rent and the Landlord did not provide documentary evidence to support his claim. This documentary evidence was easily available to the Landlord, as he was reading from it during the Hearing. **The Tenant was cautioned that rent is due on the first day of each month and that failure to pay rent when it is due, or to repeatedly pay rent late, is reason to end a tenancy.**
- The photographs provided in evidence show a rental unit that has fallen into disrepair over the years. The roof is weathered and missing shingles; there are gaping holes in the deck; cracks in pavement; water stains in the ceiling and around light fixtures in the basement suite; mould in the insulation; water damage to wooden support beams; poorly patched linoleum; and thick mould on walls extending approximately 2 feet up from the floor.
- Section 32 of the Act requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law. The Landlord did not dispute that the chimneys had

not been cleaned in 20 years. He did not dispute that the Tenant was left to clear the drains four times over the past 5 years and pay for the first three power snake rentals. I find it likely, on the balance of probabilities, that the Landlord's failure to comply with Section 32 of the Act is responsible for the sewage backup and not the Tenant's failure to repair damage caused by him or other occupants in the rental unit.

- I find that the Tenant has not assigned or sublet the rental unit.

Therefore, I grant the Tenant's application to cancel the Notice. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

Should the Landlord be ordered to make repairs to the rental unit?

Having found that the Landlord has failed to comply with section 32 of the Act, and based on the Tenant's testimony and documentary evidence, pursuant to Sections 62(3) and 32 of the Act, I Order the Landlord to do the following:

- Comply with directions of the professional hazmat team with respect to mould removal and other orders.
- Hire a professional contractor to inspect the rental unit and to repair or replace damaged or destroyed plumbing; weeping tiles; roofing materials; plumbing; insulation; drywall; ceiling, flooring and outside decking.
- Provide the Tenant a copy of the professional(s)' report including recommended repairs.
- Guideline 1 of the Residential Tenancy Guidelines provides that a landlord is responsible for cleaning and maintaining chimneys at appropriate intervals. I order the Landlord to have the chimneys cleaned immediately and annually thereafter.

I Order that all of the above steps be completed no later than February 1, 2013.

Is the Tenant entitled to a rent reduction and if so, in what amount?

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. The Tenant provided evidence that the rental unit has not been maintained by the Landlord and that there have been problems with the roof leaking and toilets backing up as far back as September 7, 2007. However, the Tenant did not file an Application for Dispute Resolution with respect to these issues until August 21, 2012. Therefore, I am making an order with respect to rent abatement effective August 16, 2012, the date of the flood. I find that the value of the tenancy has been diminished as a result of the Landlord's failure to comply with Section 32 of the Act. I find that the Tenant has not had use of the basement suite (approximately ½ of the rental unit) since August 16, 2012 and that

he is entitled to a rent abatement of 50% from August 16, 2012 to September 30, 2012, and to a future rent reduction of 50% from October 1, 2012, until all of the repairs and maintenance orders set out above are completed **and the Landlord is successful in an application to have the rent reduction stopped.** To be clear, once the Landlord has completed these repairs, the onus is on the Landlord to be successful in an Application for Dispute Resolution that the rent reduction should cease.

Therefore, I calculate the total rent payable for the months of August and September, 2012, as follows:

August, 2012: Rent from August 1 – 16:	\$725.00
Rent from August 16 – 31 (1/2 of \$725.00)	<u>\$362.50</u>
Total	\$1,087.50
September, 2012: (1/2 of \$1,450.00)	<u>\$725.00</u>
TOTAL rent payable for August and September, 2012:	\$1,812.50

The Tenant has paid \$2,900.00 for August and September, 2012, and therefore I find that he is entitled to compensation in the amount of **\$1,087.50, which he may deduct from future rent due to the Landlord.**

The Tenant has been successful in his application, and I find that he is entitled to recover the cost of the **\$50.00** filing fee from the Landlord. This award may also be deducted from future rent.

At the end of the Hearing, I explained to the parties that I was cancelling the Notice and that I would be making repair orders and an order reducing rent. Because October's rent was due to be paid within a few days, during the Hearing I ordered that the Tenant pay the Landlord \$725.00 for October rent.

For clarity, after deducting his compensation of \$1,087.50 and the recovery of the \$50.00 filing fee, **rent for November, 2012 will be NIL and for December, 2012, will be \$312.50.** Commencing January, 2013 and until the Landlord is successful in an application to have the rent reduction stopped, rent will be **\$725.00.**

Conclusion

I grant the Tenant's application to cancel the Notice to End Tenancy for Cause issued August 17, 2012. The tenancy will remain in full force and effect until it is ended in accordance with the provisions of the Act.

I Order the Landlord to do the following before February 1, 2013:

- Comply with directions of the professional hazmat team with respect to mould removal and other orders.
- Hire a professional to inspect the rental unit and to repair or replace damaged or destroyed plumbing; weeping tiles; roofing materials; plumbing; insulation; drywall; ceiling, flooring and outside decking.
- Provide the Tenant a copy of the professional(s)' report including recommended repairs.
- Chimney cleaning now and annually thereafter.

I find that the Tenant is entitled to rent abatement and recovery of his filing fee in the total amount of **\$1,137.50**, which he may deduct from future rent due to the Landlord. The parties were advised during the Hearing that rent for October is \$725.00. Therefore, **rent for November, 2012 will be NIL and for December, 2012, will be \$312.50**. Commencing January, 2013 and until the Landlord is successful in an application to have the rent reduction stopped, rent will be **\$725.00**.

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: October 01, 2012.

Residential Tenancy Branch