

DECISION

Dispute Codes CNL, MNDC, RR

Introduction

This is an application filed by the Tenant for an order cancelling a notice to end tenancy issued for Landlord's use of the property, a monetary order request for money owed or compensation for damage or loss and to be able to reduce rent for repairs, services or facilities.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package and evidence submitted, I am satisfied that both parties have been properly served.

The Tenant's application indicated that he was seeking an order for the recovery of the filing fee. Based upon the submitted application, the fee was waived. As such, the Tenant is not entitled to recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy issued for Landlord's use of the property?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to a reduction in rent?

Background, Evidence and Analysis

This Tenancy began on December 1, 1995 on a fixed term tenancy and then thereafter on a month to month basis as shown by the signed Tenancy Agreement. Both parties agreed that the current monthly rent is \$975.00 payable on the 1st of each month and a security deposit of \$450.00 was paid.

Both parties agreed that the Landlord served the Tenant with a 2 month notice to end tenancy for Landlord's use dated September 18, 2012 on the same date in person. The stated reason is "The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental

unit to be vacant.” The Landlord states that the unit must be vacant because the bathtub faucet leaks and requires repair. The Landlord has also stated that they wish to replace the pipes and upgrade the entire bathroom to re-rent the unit at market levels. The Tenant disputes this and has provided photographs of the rental unit. The Landlord’s documentary evidence on page 11 states, “The work that we’ll be doing does not need a permit. Our Proof of Renovations as follows: Upgrade kitchen cupboards and counters, tiles including new sink and water taps. Paint whole unit and replace blinds. Replace bathroom tub, sink, water taps, tiles. To repair any leak water pipes. Everything stays at the same position. Basicly just do repairs if necessary and cosmetic upgrades. No interior wall will be changed nor installing new plumbing or electrical.

I am satisfied that the Tenant was properly served with the 2 month notice to end tenancy issued for Landlord’s use and served in person on September 18, 2012. I find the Landlord’s evidence to not support her reasons for cause on the notice. The Landlord’s evidence is contradictory as she states that water pipes need to be replaced, but has failed to provide any details of the pipe/water repairs. The Landlord’s own documentary evidence states that, “no interior wall will be changed nor installing new plumbing or electrical.” The Landlord admitted in her direct testimony that this was an effort to raise the rent to market levels after upgrading the rental. The Landlord has failed to provide sufficient evidence to satisfy me that the work to be performed requires the unit to be vacant. The notice dated September 18, 2012 is set aside. The Tenancy shall continue. The Tenant has been successful in this portion of the application.

The Tenant also seeks a monetary order for \$95.00 for the cost of purchasing two oil heaters purchased at Walmart (receipt submitted \$92.51). The Tenant states that the building heater was off mid September and remained off until mid October. The Landlord disputes this claim as the Tenant never notified them that there was an issue with heating and that the building heater is always turned off during the summer months. The Landlord states that there is nothing wrong with the heater and that it was turned on in late September, except for 1 day when the heater was being serviced. The Tenant confirms that no prior notification on the heating issues or the purchase of the two heaters were given to the Landlord until this application was filed. The Tenant cites poor communication/attitude with the Landlord because of the notice to end tenancy issued on September 18, 2012 to him. The Tenant also seeks a reduction of rent for approximately \$25.00 for the cost of electricity for the two heaters. No receipts submitted. The Landlord also disputes this claim as the issue of heat or the purchase of heaters was never brought to their attention prior to the hearing and that they should not be responsible for this cost and that there is nothing wrong with the building heater. I find based upon the direct testimony of the Tenant that he failed to give notification to fix any possible heat problem. There is insufficient evidence provided to show that there

was anything wrong with the heater or that the Landlord failed to act in accordance with the Residential Tenancy Act. The Tenant's application for a monetary order and to be able to reduce rent is dismissed.

Conclusion

The Tenant's application to cancel the notice to end tenancy is granted. The notice dated September 18, 2012 is set aside and the Tenancy shall continue in full effect.

The Tenant's request for a monetary order is dismissed.

The Tenant's request for an order to reduce rent for the loss of electricity 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: October 29, 2012.

Residential Tenancy Branch