



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, ERP, PSF, RR, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; a Monetary Order for damages or loss under the Act, regulations or tenancy agreement; authorization to reduce rent; and, Orders for: repairs; for the landlord to comply with the Act and provide services or facilities required by law. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant served his application and evidence upon the landlord by posting it to the landlord's door. While this method of service does not comply with the requirements for serving an Application for Dispute Resolution the landlord acknowledged receiving the Application and evidence and I deemed the landlord sufficiently served with the tenant's package pursuant to section 71 of the Act.

The landlord provided documentary evidence to the Branch and acknowledged that she had not served the same package upon the tenant. The landlord stated that the tenant had a copy of the majority of the documents except for the landlord's written response to the tenant's Application. I informed the parties that I would not accept the landlord's written submission pursuant to the principles of natural justice; however, the landlord would be provided the opportunity to provide her response verbally during the hearing.

Issue(s) to be Decided

1. Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?
2. Has the tenant established an entitlement to monetary compensation for damages or loss under the Act, regulations or tenancy agreement?

3. Is it necessary to issue Order to the landlord for compliance, repairs, or to provide services or facilities?
4. Is the tenant authorized to reduce rent payable?

Background and Evidence

The tenancy commenced December 2, 2008 and the tenant is required to pay rent of \$650.00 on the 1st day of every month. The residential property is a house where the landlord lives upstairs, the tenant lives in a lower bachelor unit, and other tenants live in a separate basement suite. There is only one hydro account for the entire residential property and the tenant is required to pay a portion of the hydro bill to the landlord.

Notice to End Tenancy

Both parties agreed that the landlord had issued a letter to the tenant on May 29, 2012 requiring him to vacate the property. The tenant did not dispute the letter or vacate as the letter was not a proper notice to end the tenancy.

The 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) under dispute was issued October 2, 2012 although the tenant submitted that it was not posted on his door until October 4, 2012. The Notice indicates the reason the landlord wishes to end the tenancy is because: the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord submitted that her son, who currently resides in Iran, intends to return Canada to live in the bachelor unit after the tenant vacates the unit. The landlord testified that her son is now unemployed and cannot earn money in Iran due to the sanctions in Iran. The landlord explained that the bachelor unit was previously occupied by her son, contains her son's furnishings, and now that he is returning to Canada permanently he will resume residency in the bachelor unit. The landlord acknowledged that during this tenancy the landlord's son has returned to Canada for a couple months at a time and would stay in the landlord's unit.

The tenant submitted that both the letter and the Notice were given to him after he raised concerns to the landlord. Prior to the issuance of the letter in May 2012 the tenant had complained that the hydro bill was too high and his share was too high as the landlord was not taking into account the electric heat used by the landlord and the other tenants. When the tenant delivered a written request for repairs to the landlord on October 3, 2012 the landlord responded by serving him with the Notice. The tenant

contended that every time the tenant brings up concerns the landlord's rudely reacts by telling him that it is her house and that he should leave.

The landlord responded by stating that she has taken care of various maintenance issues over the length of the tenancy as evidence by the fact that the tenant has lived in the rental unit for four years. However, now the landlord feels uncomfortable in her own house because of the tenant.

Repairs, services and facilities

In filing this application the tenant identified that the lighting and cooking facility was in need of repair or replacement. The tenant stated that he requested these repairs verbally in late September 2012 and then in writing on October 3, 2012. The tenant stated that only after he served the landlord with his Application did the landlord make repairs to the lighting and provided him with a replacement cooking appliance. However, in the past week the exterior motion detector has stopped working again. The tenant submitted that the exterior motion detector is an important safety device as it provides light to the exterior stairs leading to his entry door.

The landlord had evidence that she purchased a new cooking appliance on October 21, 2012 and it was provided to the tenant in the days that followed. The landlord has also purchased replacement bulbs and lighting fixture on a number of occasions. The landlord implied the tenant has done something to the light fixture to make it stop working.

The tenant pointed out that the motion detector is approximately 16 feet above the ground and that he has done nothing to it. The switch for the light is in the other basement suite but that the red light, indicating there is electricity to the light, has remained on.

The landlord eventually agreed to make necessary repairs to the motion detector.

Monetary compensation

The tenant is seeking \$300.00 as compensation for the landlord's delay in repairing the lighting and replacing the cooking facility. The tenant submitted that without the cooking facility he had to either eat cold food or purchase meals. In addition, the tenant was inconvenienced by having to use a flashlight to navigate the exterior stairs in the dark or risk injury. The landlord's reaction to his concerns has been that it's "my house" and she has only taken the repair requests seriously because the tenant filed this claim.

The landlord was of the position that she has reacted promptly to issues that require repair or replacement. The landlord submitted that the tenant's filed a claim because she served him with a Notice to End Tenancy.

Analysis

Upon considering everything before me I provide the following findings and reasons with respect to the issues raised by way of the tenant's application.

Notice to End Tenancy

Where a Notice to End Tenancy comes under dispute the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

The Notice given to the tenant is provided for under section 49 of the Act. Section 49(3) provides that a landlord may end the tenancy where:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

[my emphasis added]

Residential Tenancy Policy Guideline 2: *Good Faith Requirement* provides for a policy statement of the intent of the legislation based upon common law and rules of statutory interpretation, where appropriate. The policy guideline provides, in part:

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then

that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, I find the tenant has called the landlord's good faith intention into question given the timing of the landlord's attempts to end the tenancy closely correspond to the times when the tenant raised concerns to the landlord about his portion of hydro bills and need for repairs.

The landlord has stated her son is unemployed and cannot make money in Iran but indicated that her son will not be returning until the tenant vacates the bachelor unit. I find this argument has not been supported by any corroborating evidence. I also find it unlikely that the landlord's son would remain unemployed and without the ability to make money in another country because the tenant has not vacated the rental unit when I consider the landlord's son has previously resided with the landlord for months a time.

In light of the above, I find the landlord has not met her burden of proof that she had a good faith intention behind the issuance of the Notice. Accordingly, **I set aside the Notice with the effect that this tenancy shall continue.**

Repairs, services and facilities

The only outstanding repair issue at the time of this hearing was the exterior motion detector. I accept that the operation of this fixture is necessary for the safe ingress and egress from the rental unit. Accordingly, **I order the landlord to investigate the problem with the motion detector and make the necessary adjustments, repairs or replacement as necessary within one week of receiving this decision.**

Monetary compensation

Based upon the evidence before me, I accept that the tenant requested repairs to the cooking facility and lighting, in writing, on October 3, 2012. I find that the landlord's

response took approximately three weeks which I find is excessive considering the cooking facility is the tenant's primary way of making warm meals and the unsafe passage on the stairs when it is dark.

The tenant did not substantiate his actual costs of eating out so I find an appropriate award to be a percentage of his monthly rent. I find 25% of the tenant's monthly rent during the three week delay to be reasonable. Therefore, **I award the tenant \$114.00** for loss of use and enjoyment, calculated as: $[\$650.00 \times 25\% \times 21/30 \text{ days, rounded}]$.

Filing Fee and Rent reduction

In addition to the above monetary award **I also award the \$50.00 filing fee to the tenant** as his application was largely successful.

In satisfaction of the amounts awarded to the tenant in this decision, the tenant is authorized to reduce his next month's rent by \$164.00 $[\$114.00 + \$50.00]$ and the landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

The landlord is ordered to investigate and make necessary adjustments, repairs or replacement of the exterior motion detector within one week of receiving this decision.

The tenant has been compensated and is authorized to deduct \$164.00 from a subsequent month's rent.

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: November 27, 2012.

Residential Tenancy Branch