



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPC, ERP, RP, FF

Introduction

This hearing concerns the tenant's application for cancellation of a 1 month notice to end tenancy for cause / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property, and recovery of the filing fee.

Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

There is no written tenancy agreement in evidence for this month-to-month tenancy which began on or about March 1, 2012. Monthly rent of \$900.00 is due and payable in advance on the first day of each month, and a security deposit of \$450.00 was collected. A move-in condition inspection report was not completed.

The tenant testified that she is not aware that any water is presently leaking into the rental unit. For her part, the landlord considers that all previous problems with water leaking into the unit been remedied, and that all damaged carpet and drywall associated with previous leaks have been replaced / repaired. It appears that there were two different sources of previous leaks: the tenant's shower and the landlord's bathroom located upstairs from the rental unit. However, while there is no evidence of any current water leakage, the tenant considers there is a mould problem behind the wall of the closet in the master bedroom, in the shower and otherwise within the bathroom itself.

All of the foregoing led to the tenant's initial application for dispute resolution which was filed on December 20, 2012.

Thereafter, on December 30, 2012 the landlord issued a 1 month notice to end tenancy for cause, which was personally served on the tenant on that same date. The tenant then amended her original application for dispute resolution on January 4, 2013, to include an application to have the 1 month notice set aside. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is February 1, 2013, and reasons shown for its issuance are as follows:

Tenant or a person permitted on the property by the tenant has:

seriously jeopardized the health or safety or lawful right of another occupant or the landlord

put the landlord's property at significant risk

Tenant has caused extraordinary damage to the unit or property

In support of her issuance of the notice, the landlord claims, among other things, that water leakage into the bedroom closet was a function of the tenant's shower supplies being hung from the shower head, and that the tenant's use of abrasive tools to clean grout in the unit shower diminished the integrity of the water seal in the shower. Further, the landlord alleges that the tenant is responsible for disabling the smoke detectors / smoke alarms in the unit which has rendered the insurance coverage invalid.

In addition to all of the foregoing, the tenant objects that the landlord has entered the unit without proper notice.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

First, the attention of the parties is drawn to the following particular sections of the Act:

Section 23: **Condition inspection: start of tenancy or new pet**

Section 24: **Consequences for tenant and landlord if report requirements not met**

Section 35: **Condition inspection: end of tenancy**

Section 36: **Consequences for tenant and landlord if report requirements not met**

Further, section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 47 of the Act speaks to **Landlord's notice: cause**. Having carefully considered the documentary evidence and testimony, I find that the landlord has failed to meet the burden of proving that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. I further find that the landlord has failed to meet the burden of proving that the tenant has caused extraordinary damage to the unit or property. In part, I make these findings as a result of the absence of a move-in condition inspection report. In the result, the 1 month notice to end tenancy is hereby set aside, and the tenancy continues in full force and effect.

Based on the documentary evidence and testimony, I hereby issue the following **ORDERS** to the landlord:

I hereby **ORDER** the landlord to inspect the status of all smoke detectors / smoke alarms in the rental unit, ensuring that by not later than **February 16, 2013**, each and every one of them (however many there may be) is in working order. Related to this ORDER, the parties are encouraged to familiarize themselves with the statutory

provisions set out in section 29 of the Act, which addresses **Landlord's right to enter rental unit restricted**.

I hereby **ORDER** the landlord to remove all visible evidence of mould both *within the tenant's shower*, and at all other sites *within the tenant's bathroom* by not later than **February 28, 2013**.

As to the tenant's allegations related to mould behind the wall of the bedroom closet, I find that there is insufficient evidence that the unit fails to comply with "the health, safety and housing standards required by law," or that the unit (in particular the master bedroom) is unsuitable for occupation. The tenant's application for orders to be issued to the landlord in this regard is, therefore, hereby dismissed.

As the tenant has achieved a measure of success with her application, I find that she has established entitlement to recovery of the **\$50.00** filing fee. I therefore order that the tenant may withhold this amount from the next regular payment of monthly rent.

Conclusion

The landlord's notice to end tenancy is hereby set aside, with the result that the tenancy presently continues in full force and effect.

Certain orders have been issued to the landlord, as set out above.

The tenant may recover the filing fee by way of withholding \$50.00 from the next regular payment of monthly 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: January 25, 2013

Residential Tenancy Branch

