



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MT, OLC, ERP, RP, LRE, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for more time to make the application, for emergency repairs and general repairs to the rental unit, to set conditions on the landlord's right of entry and to recover the filing fee for this proceeding.

The Tenant said he served the Landlords with the Application and Notice of Hearing (the "hearing package") by personal delivery on January 21, 2013. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to more time to make the application?
3. Has the Landlord complied with the Act?
4. Are there emergency repairs and or general repairs to be done?
5. Is the Tenant entitled to an order setting conditions on the Landlord's right of entry to the rental unit?

Background and Evidence

This tenancy started approximately 8 years ago as a month to month tenancy. Rent is \$1,250.00 per month; \$625.00 payable on the 1st and \$625.00 payable on the 15th of each month. The Tenant paid a security deposit of \$625.00 in advance of the tenancy.

The Landlords said they served the Tenant with a 1 Month Notice to End Tenancy for Cause dated January 20, 2013. They served the Notice on January 20, 2013 by personal delivery to the Tenant. The Tenant said he did not receive the Notice to End Tenancy in person but found it on his door step. The Effective Vacancy Date on the Notice is February 23, 2013.

The Landlords said the rent is paid now and they are willing to continue the tenancy if the Tenant pays the rent on the 1st and the 15th and confirms the rent has been paid by text message them. The Tenant said he is in agreement with this and the Tenant requested the Landlord forward a written rent receipt to him when the Landlord has confirmed the rent payment has been received by the Landlords' bank. The Landlords agreed to give written rent receipts on all rent payments made by the Tenant. Both Parties agreed to continue the tenancy as agreed.

The Tenant continued to say that he has concerns about the repair of the rental unit and his application includes emergency repairs, general repairs, for the Landlord to comply with the Act and to set condition for the Landlords to enter the rental unit. The Tenant said he wants the Landlord to give him a written 24 hour notice prior to entering the rental unit. The Landlord said it is difficult to contact the Tenant and the Tenant has not co-operated in all situations when they have they have entered the rental unit for inspections and for repairs to the unit. The Tenant said he has been co-operative and he will continue to be co-operative in allowing the Landlord entry to the unit if he is given proper notice by the Landlord. The Landlord said they would give the Tenant proper written notice when they are planning to enter the rental unit.

The Tenant continued to say there are three items that need repair in the rental unit. First the roof is leaking, secondly the septic system is over flowing into the yard and thirdly there are stairs in the unit that are unsafe. The Tenant said the Landlords had a roofer at the rental unit in January, 2013 to fix the roof, but the roof is still leaking. The Landlord said they have tried their best to repair the roof but the Tenant was not co-operative when they inspected the roof so they did not know the roof is still leaking. The Landlords continued to say they will fix the roof if it is still leaking.

The Tenant continued to say the septic system is leaking into the yard particularly when it rains which causes the sewer water to flow above the septic field and into a drainage ditch on the property. The Tenant said the water stays in the ditch and it smells and is a health hazard. The Landlord said they have inspected the ditch and it is not sewer water but stagnant water which accumulates in the ditch, because the Tenant does not mow the grass. The Landlord said the water collects in the ditch and smells because it stagnates. The Tenant said that is not the case, the water is from the septic system and he does mow the grass. The Landlord said the water is not from the septic system.

The Tenant continued to say a set of stairs in the rental unit broke when a guest of the Tenant was walking on the stairs and therefore the stairs are unsafe and the Tenant has blocked the stairs off. The Tenant said he tried to fix the stairs but he believes the stairs are structurally unsafe. The Landlords said this is the first they have heard about the stairs and they do not believe the stairs are structurally unsafe. The male Landlord said he is a mechanical engineer and he would inspect the stairs.

The female Landlord said the Tenant has changed the locks on the rental unit and they do not have a key. The Landlords requested that the Tenant give them a key so that they have access to the unit in an emergency situation. The Tenant said he thought the

Landlords had a key and he will give the Landlords a key to the rental unit the next time the Landlords are at the unit.

In the closing remarks the Landlord thought he may make a settlement offer to the Tenant to end the tenancy because the Landlord said the tenancy is becoming too difficult. The Landlord was not prepared to make an offer during the meeting, but thought he may at a later date.

The Tenant said he wants to continue to live in the rental unit and continue the tenancy as he has been there for 8 years and he considers the rental unit his home. The Tenant said he will co-operate with the Landlord, but he does want the repair issues dealt with so the unit is safe and livable.

Analysis

The 1 Month Notice to End Tenancy for Cause was issued on the basis that the Tenant was repeatedly late with the rent payment. The parties agreed that the rent was paid to date so both the Landlord and the Tenant agreed to continue the tenancy on the condition that the Tenant make all future rent payments on the 1st and 15th of each month and the Tenant will confirm the rent payments have been made by text message to the Landlords. The Landlords then agreed they will issue written rent receipts to the Tenant upon confirmation by the Landlords' bank that the rent payment were received. As the parties have agreed to continue the tenancy the 1 Month Notice to End Tenancy for Cause dated January 20, 2013 is cancelled due to a settlement agreement by the parties.

It appears from the testimony at the hearing that communications between the Landlords and the Tenant has broken down to some degree with respect to repairs on the rental unit. There was contradictory testimony provided by both the Tenant and the Landlords regarding the condition of the rental unit and how repairs have and should be done. It is apparent the Landlords and the Tenant will not agree about the condition of the rental unit and if repairs are required. Consequently as no third party evidence or testimony was provided by either the Landlords or the Tenant I Order the Landlord to hire certified contractors to inspect the roof, the septic tank and septic field and the stairs that the Tenant testified are broke to determine if these three items need repair work.

Section 32 of the Act says 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.

I order that the inspections be completed within 30 days of the parties receiving this decision. As well I order the Landlord to provide the Tenant with a copy of the inspection reports so the Tenant and the Landlords can have a third party expert determine the state of repair of the roof, the septic system and the stairs. In addition and pursuant to section 32 of the Act I Order the Landlord to make the repairs to the roof, the septic system and the stairs that are needed to be done to comply with the Act. The repairs are to be completed within 90 days of the inspection reports.

If there is continued disagreement on condition of the roof, the septic system and the stairs and if the repairs that may be required to comply with the Act are not done then the Tenant is at leave to apply for monetary compensation.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$50.00 from the Landlords. The Tenant may deducting \$50.00 from the March, 2013 rent payment or collect the \$50.00 filing fee directly from the Landlords.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated January 20, 2013 is cancelled and the tenancy is ordered to continue as agreed.

The Landlord is ordered to have the rental unit inspected by certified contractors to determine the state of repair of the roof, the septic system and the stairs.

The Landlord is ordered to comply with section 32 of the Act with regard to maintenance and repair of the rental unit.

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: February 19, 2013

Residential Tenancy Branch

