



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an order ending the tenancy early and to obtain an Order of Possession.

The hearing did not conclude on its first day and was adjourned to continue the next day. The tenant did not receive the dial-in instructions, and the hearing was again adjourned to the following day. The landlord and the tenant attended the conference call hearing on the first and third days. The landlord had attended the second day, but in the absence of the tenant no testimony was taken. Both parties gave affirmed testimony and both parties provided evidentiary material in advance of the hearing.

A great deal of time was devoted to ensuring that the landlord was served with the entire evidence package of the tenant. The tenant provided 50 pages of evidence, and the landlord stated that only about 40 pages were received. Every page was examined to determine what was received by the landlord, and the tenant stated that all pages were provided.

The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision, with the exception of the pages that the landlord claimed to have not received.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established an entitlement to ending the tenancy early and obtaining an Order of Possession?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 22, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord.

The landlord further testified that the rental unit is above another rental unit which is also rented, and the tenants in the lower level have been flooded 4 times all of which were caused by the actions of the tenant in this matter. The tenants are also concerned that the tenant in this matter will burn down the house.

The tenants in the lower level called the landlord on July 6, 2012 stating that water was dripping down through the registers. The landlord called the tenant in the upper level and asked if the tenant in the lower level could go into the upper unit to check the source of the water dripping, but the tenant replied that the tenant's child was asleep, but eventually allowed the landlord to check. The tenant had already cleaned up the water and told the landlord that the water leak was from the pipes. The landlord changed the shut-off valves within a couple of days and then it happened again on September 6, 2012.

In October, 2012 the tenant had claimed that the toilet was flooding. The landlord tried to plunge it and used a snake and sodium hydroxide, a chemical similar to Draino and it was working fine.

On November 17, 2012 the tenant in the lower level noticed flooding in the dining room and kitchen area, but there are no pipes there. The next day there was alot of flooding through the registers into the lower level unit, but the tenant told the landlord it was from the toilet. The landlord was not convinced and described the flooding as buckets of water which went through the duct work into the lower level suite.

The landlord further testified that in October, 2012 the tenant had asked about fire insurance, to which the landlord advised that the landlord was insured and the tenant should consider renter's insurance. The landlord was told by the tenants in the lower level that the tenant told them that \$30,000.00 was collected from a previous fire insurance claim, and the tenants in the lower level are concerned the tenant will burn the house down to collect insurance. Further, the tenant doesn't have a job, having been fired from previous employment, however the landlord has no evidence of such,

and testified that the landlord has heard that from some other source. The landlord is not sure of the tenant's employment situation at this time.

The tenant testified that the tenant is employed as an assistant Early Childhood education provider, on-call, but almost full-time.

The tenant further testified that the tenant has applied for dispute resolution to require the landlord to make repairs to the rental unit. Once the landlord was served with the documentation for that hearing, which is scheduled to be heard on January 7, 2013, the landlord made this application for ending the tenancy early and therefore received an earlier hearing date.

The tenant also testified that the landlord claims there have been no more floods but the tenant cannot use the ensuite in the rental unit. Every time the toilet is flushed, it requires plunging or it floods. Last month the tenant stopped using it. The landlord brought a plumbing snake but told the tenant that the landlord didn't know how to use it and left it in the rental unit. The snake was never used to correct the problem and no licensed plumber ever attended. The landlord had asked the tenant in the lower level to look at it, but he's a refrigerator mechanic, not a plumber, and he fixed the shut-off valve and toilet seal.

The tenant denies ever pouring water in the registers and testified that the landlord's testimony in that regard it totally fabricated. The tenant flushed the toilet and went to retrieve pajamas for the tenant's child and was out of the bathroom for about 5 minutes, during which time the toilet plugged and overflowed. The chain had been installed by the landlord, not by a plumber. The tenant grabbed towels and turned off the toilet tap. The tenant did nothing to damage anything in the rental unit or the lower level suite. The tenant claims that the landlord doesn't want to make the repairs and filed this application to avoid an order to make repairs.

The tenant further testified that the tenant in the lower suite turned off the breaker to the tenant's stove on January 3, 2013. The tenant called the landlord who had the tenant in the lower level turn the breaker back on and the tenant was able to cook. However, today, January 4, 2013 the breaker has been turned off again and the landlord told the tenant that the tenants in the lower suite turned it off and won't turn it back on.

The tenant further testified that the tenants in the lower suite have placed a camera on the outside of the house which is pointed directly at the tenant's door. The tenant contacted the police on a few occasions regarding missing belongings, and told the

police about the camera, who advised the tenant to move the camera, but it is now aiming directly at the tenant's door again.

During cross examination, the tenant was asked if the landlord and tenant are cordial to each other, to which the tenant replied that they used to be, but the landlord has hung up the phone on the tenant twice and has resorted to yelling at the tenant, even as late as today, January 4, 2013.

Analysis

The *Residential Tenancy Act* states that if a landlord has cause, a landlord can issue a 1 Month Notice to End Tenancy. In a case where a landlord does not feel that waiting for such a notice to be effective, due to damage or other issues, a landlord can apply for an order ending a tenancy earlier than the 1 Month Notice would take effect. However, in order to be successful with such a claim, the onus is on the landlord to prove that the landlord has cause to end the tenancy earlier than the date that a one month notice would take effect.

In this case, the landlord claims to be concerned about flooding and fires. I find no evidence that the landlord has any concerns or should have any concerns. There is no evidence that the tenant has collected any insurance money, no evidence that the tenant will burn down the house, no evidence that the flooding was deliberate, and no evidence to support the landlord's claim that the tenant ought to be removed from the rental unit prior to any notice to end the tenancy becoming effective. The landlord relies on rumours that the tenant collected insurance money and intends to again. The landlord also relies on statements from tenants in the lower level, but did not dispute the testimony of the tenant that there are issues about flooding and the landlord has not called a plumber to investigate or repair the problems causing the toilet to overflow. The tenant testified that the ensuite has not been used due to the overflowing problems and hasn't used it for about a month. The landlord testified that there haven't been any flooding issues of late, and perhaps that is because the tenant no longer uses the ensuite.

At the conclusion of the hearing, I advised the parties that the landlord, in my view, has failed to establish the claim before me and the landlord's application is hereby dismissed without leave to reapply. The tenancy continues.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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 07, 2013.

Residential Tenancy Branch

