



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, ERP, RP, PSF, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a two month notice to end tenancy for landlord use (the, “notice”), for a monetary order for compensation for loss, to have the landlord make emergency repairs, to provide facilities required by law and to recover the cost of the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Should the notice issued on January 12, 2013, be cancelled?
Is the tenant entitled to monetary compensation for loss under the Act?
Should the landlord be ordered to make emergency repairs?
Should the landlord be order to provide facilities required by law?

Background and Evidence

The tenancy commenced in 2008. Current rent is \$400.00 per month payable on the 21st day of each month. The tenant did not pay a security deposit.

The parties agreed that a two month notice to end tenancy for landlords use of property was served on the tenant indicating that the tenant is required to vacate the rental unit on March 20, 2013.

The reason stated in the notice to end tenancy was that:

- The rental unit will be occupied by the landlord or the landlord spouse or a close family member (father, mother, child of the landlord or the landlord’s spouse.

The tenant testified that he is seeking the notice to end tenancy issued on January 12, 2013, be cancelled. The tenant stated the notice was not issued in “good faith” and was issued in retaliation for filing his application on January 10, 2013.

The tenant testified that on December 15, 2012, a problem began with the shower and toilet backing up and as of today's date the bathroom facilities is not usable. The tenant stated he called a plumber and he came to the rental unit and removed a blockage in the pipe leading to the septic field, however, that worked only for a few hours. The tenant stated the septic pipe leading from his unit to the septic field needs to be properly inspected and repaired as he has not been unable to use the facilities and it is very inconvenience to have to go elsewhere. The tenant stated his tenancy has been devalued by 75%.

The landlord testified that there is a problem with the tenant's septic line, which leads to the septic tank, but it would be far too costly to have it repaired. The landlord states they no longer want to rent the unit and will use it for their own purposes.

The landlord writes in the response dated January 21, 2013, "... on Jan 6, my wife offered him to have a commode for a temperate option, but (tenant) wanted to have a shower. Here it developed a misunderstanding between my wife and (tenant). My wife did not hear the question when (tenant) asked for how to deal with the waste. For the waste, I will answer you here that you can put it in a barbage bin and later I will take them away. It is not a good solution but will solve your emergency situation. For most of us, we only do bowel movement daily".

[Reproduced as written]

The landlord writes in the response dated January 21, 2013, "...my wife and I discussed that we have to let (tenant's name) to move out due to we can not fix the backing up problem in the toilet. Even through we try our best to solve the problem, we still unable to solve it in an affordable way."

[Reproduced as written]

Analysis

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not proven the notice was issued for the reasons stated in the notice:

- The rental unit will be occupied by the landlord or the landlord spouse or a close family member (father, mother, child of the landlord or the landlord's spouse.

I find the evidence of the tenant, the evidence of the landlord and the landlord's written submission, supports the motive to have the tenant vacate the rental unit is to avoid making the required repairs. As a result, I find the two month notice to end was not issued for the reasons stated in the notice. The tenant's application to cancel the notice is granted, and the notice is hereby cancelled. The tenancy will continue until legally ended in accordance with the Act.

Under section 32 of the Act, the landlord is required to maintain residential property to make it suitable for occupation by a tenant and comply with the health, safety and housing standards required by law. I find by the landlord not make the repairs to the septic line causing the tenants bathroom to be unusable and unsuitable for living is a violation of section 32 of the Act.

Further, I find it reasonable that the tenant expected the bathroom facility to be maintained and repaired as necessary in a reasonable period of time. The offer of a commode by the landlord, and the suggestion of placing human waste in a garbage bin even on a temporary basis are far beyond what is considered reasonable and is not in compliance with the health, safety and housing standards required by law. I find the landlord has violated section 32 of the Act.

I order the landlord to have the septic line from the tenant's rental unit to the holding tanking inspected by a professional to determine any work that needs to be done within 14 days; and if the professional determines repairs need to be done, I order the landlord to carry the repairs out within 30 days.

The tenant seeks monetary compensation for the loss of use of the bathroom facility as the loss has depreciated the value of the tenancy significantly. The landlord was aware a problem existed with the septic line and has failed to take reasonable steps to investigate and make the required repair, I find that the tenant is entitled to compensation for the period, December 15, 2012 to February 20, 2013, in the amount of \$480.00(which represents a rent reduction of approximately 60%) due to the landlord's failure to make repairs. Therefore, I authorize the tenant to deduct from future rent payable the amount of **\$480.00**.

If the professional determines work is required to be done to the septic line to make the rental unit suitable for living; and if that work has not been completed by February 21, 2013, the tenant is entitled to a further rent reduction of \$240.00 per month, until such time as the landlord complies with the Act.

I find that the tenant is entitled to **\$50.00** for the cost of filing the Application, and I order the tenant to deduct \$50.00 from a future rent payable.

Conclusion

The tenant's application to set aside the two month notice to end tenancy issued on January 12, 2013, is granted and the notice is hereby cancelled. The tenancy will continue until legally ended in accordance with the Act.

I order the landlord to have the septic line to the rental unit inspection by a professional within 14 days; and if the professional determines repairs need to be done, I order the landlord to carry the repairs out within 30 days.

The tenant is granted a monetary compensation and may deduct the above amount from future rent payable.

The tenant is granted a rent reduction if the repairs are not completed as stated above.

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 07, 2013

Residential Tenancy Branch

