



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, ERP, RP, LRE, LAT RR

Introduction

This hearing was convened in response to the tenant's application seeking

1. To cancel a Notice to End Tenancy given for cause;
2. An Order compelling the landlord to comply with the Act;
3. An Order compelling the landlord to make emergency repairs and repairs;
4. An Order restricting the landlord's right of entry;
5. An Order allowing the tenant to change the locks to the rental unit; and
6. A rental reduction.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issues(s) to be decided

Does the landlord have cause to end this tenancy? If not, should the landlord be compelled to comply with the Act, to make emergency and general repairs? Should the tenant's rent be reduced? Should the landlord's right to enter the rental unit be suspended? Should the tenant be allowed to change the locks on the rental unit?

Background and Evidence

This tenancy began on July 1, 2001 rent is currently \$926.00 per month.

The landlord testified that he served the tenant with a 1 month Notice to end Tenancy for Cause on April 29, 2013 by way of personal service. The landlord states that he is wishing to end this tenancy because the tenant has caused extraordinary damage to the rental unit.

The landlord says he is aware that the tenant has health problems and issues with mental illness. The landlord testified that the tenant has a little dog the tenant says that

the tenancy agreement does not allow him to have pets but he does have a dog that he does not control. The landlord says the dog is using the rental unit as a toilet. The urine goes into the hardwood floor and into the subfloor and it has destroyed the floors in the rental unit. The landlord says the tenant's suite is on the top floor it is not easy for the tenant and his roommate to get the dog downstairs onto the grass to do his business. The landlord says he is as dog lover himself and he understands the tenant's love for his pet but says he can no longer stay because he is not controlling his dog and this is causing severe damage to the suite. The landlord says he has had many friendly conversations with the tenant about the problems but the problems continue.

Further, the landlord says further that the tenant does not report repair issues to him. The landlord testified that he told the tenant that if there is a water leak or something falling apart the tenant must report the matter and the landlord will come and fix it. Recently the landlord says he replaced the vanity faucet was completely loose and in danger of causing a flood. The landlord says he is very happy to make these repairs but each time he goes into the suite he sees that the dog is still urinating on the floors and the tenant covers up a particularly bad area with a chair when the landlord comes in. The landlord says this has gone on for years and the tenant refuses to take his dog outside. The landlord says that he would like to put the tenant into a ground floor suite so he has easy access to grass for his dog but he simply has no ground floor suites available. The landlord says he understands that it is difficult to run down the stairs and take the dog out onto the lawn on a rainy night but the tenant must do this. The landlord says he has cancer and is fighting for his life and he does not wish to engage in arguments with the tenant. The landlord says that if the tenant could find himself a nice garden apartment somewhere else the landlord will pay for the tenant's move.

The tenant agrees that he has a little dog but says he takes him outside 3 to 4 times per day. The tenant denies that the dog has been doing his business in the rental unit. The tenant says he has a cleaning lady who comes by once a week and cleans the entire apartment. The tenant submits that the damage to the floors and other damage in the rental unit have been the result of poor maintenance.

The tenant argued that there was a previous hearing held under a different file number. The tenant says his parents attended that hearing on his behalf and they informed the landlord of the maintenance problems in the rental unit but the landlord has still not made those repairs.

The tenant admits that the landlord has now repaired the faucet in the bathroom however the stove needs to be repaired, the fridge is not working properly and is leaking, the deadbolt on the rental unit door does not work and the tenant says he

needs a new smoke alarm. The tenant says that the floors in the kitchen need to be fixed as the tile is in very bad condition. The devices that open and close windows are broken. There is a leak in the bathtub. The tenant says no repairs taken place except for what is necessary to prevent flooding into other suites.

The tenant says that any repairs that have been undertaken have been performed and paid for by himself and his family members. The tenant says he does not need everything to be fixed right away but it must be fixed to improve the tenant's quality of life.

The landlord states that there was no previous hearing that a hearing was scheduled and was cancelled because the landlord withdrew a previous notice to end tenancy on the hope that the tenant would cooperate with respect to his dog.

The landlord responded that he agrees that the suite is in poor condition but says this is due to the lack of housekeeping not maintenance issues. The landlord says he's been in the suite many times and he can make repairs but the tenant doesn't tell him about them. The landlord says he could fix the stove in a few minutes and provide a fridge that runs better but the tenant has to keep it clean. However, the landlord reiterated that he now just wants to end this tenancy because of the damage the dog is causing to the floors. The landlord says the urine is causing the sub-floor to buckle and the entire suite needs to have the floors removed and refinished or replaced. The landlord says he is not prepared to undertake these repairs to the floors only to have the tenant allow his dog to use the floors as a toilet and cause the damage all over again.

With respect to the repairs the tenant's agent says he never realized tenants could file an application for dispute resolution seeking to compel the landlord to make repairs. The tenant's agent says he thought only landlords could make applications and this is "...news to me..." that a tenant could make an application.

The landlord responded that the tenant's parents manage rental units themselves and are surely aware of the arbitration process. Further that in their position they could find their son a suitable garden apartment for him to move to.

The tenant says he wants to change the locks to the rental unit because the landlord's wife went into his suite without permission 6 months ago. The tenant says the landlord and his wife seem to think they can enter the suite whenever they wish and they frequently do inspections.

The landlord says his wife is the manager of the building too and they have been doing inspections to see if the tenant is taking proper care of the suite and this is especially so because the tenant does not report when something needs to be repaired.

The tenant says the USB supplied in evidence is a tape recording of a phone message left by the landlord during which message the landlord is being abusive and drunk. The tenant says this is affecting his psychological well being and he is considering bringing a claim in this regard for harassment.

Analysis

The onus or burden of proof is on the party making the claim. In this case the landlord has claimed he has cause to end this tenancy and the tenant states that this cause does not exist. Both parties have submitted photographs that show a certain amount of damage to the rental unit and the parties have provided testimony as to how that damage has arisen. The landlord says the damage has been caused by the tenant's dog, the tenant says the damage is due to lack of maintenance and repair over the years. Both versions are probable and given the differing versions it is the burden of the landlord to bring further evidence to support his version. In this task I find the landlord has failed to show that the damage depicted was from the tenant's dog urinating on the floors. I therefore find that the landlord has failed in his burden of proving he has cause to end this tenancy and I will therefore allow the tenant's application to cancel the Notice to End Tenancy.

With respect to the remainder of the tenant's applications for:

1. An Order compelling the landlord to comply with the Act;
2. An Order compelling the landlord to make emergency repairs and repairs;
3. An Order restricting the landlord's right of entry;
4. An Order allowing the tenant to change the locks to the rental unit; and
5. A rental reduction.

I find that the tenant has failed to bring sufficient evidence to support his claims. The landlord has stated that he is willing to make repairs if he knows about the problems. I accept the landlord's testimony in this regard and I prefer it over the tenant's version of events. I prefer the landlord's version because the tenant's agent has made two assertions in this hearing which give rise to my concerns over the tenant and his agent's credibility. First, the tenant and his agent stated that the landlord was informed of problems at the rental unit at a previous hearing when the facts show that that hearing never took place. With respect to other means of notifying the landlord of required

repairs, the tenant did not supply evidence of having informed the landlord of repairs and stated that they did not file an application with the Residential Tenancy Branch seeking to compel the landlord to make repairs because they did not realize tenants could make such applications. The facts are, however, that the tenants did make an application and that application has resulted in this hearing.

Overall I find there is no reason to make orders to compel the landlord to make repairs or to comply with the Act when the landlord has stated he will perform the repairs if the tenant reports the need. As the landlord is now aware of the repairs issued as set out in this decision the landlord will, I am confident, attend to those repairs. Therefore the tenant's applications seeking to compel the landlord to make repairs, emergency repairs or to comply with the Act are dismissed.

Given that I have found insufficient evidence to show (a) that the landlord was informed of repairs and (b) that I have found no reason to compel the landlord to make repairs I will also find that the tenant is not entitled to reduce his rent for repairs as requested. This claim is dismissed.

The tenant says the landlord's wife, who is also a manager, entered the suite without permission 6 months ago. If this occurred, I do not find one incident to be sufficient to restrict the landlord's right of entry. Further I find that the tenant has failed to bring sufficient evidence to show that the landlord has been entering his suite without notice or such that this should give rise to a restriction of the landlord's right of entry or permission to the tenant to change the locks. These claims are dismissed.

Conclusion

The tenant's application is allowed with respect to the Notice to End Tenancy only. That Notice is cancelled. The effect of this decision is that this tenancy shall continue beyond the effective date set out on the Notice to End Tenancy issued in this matter.

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: June 04, 2013

Residential Tenancy Branch