



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Corrected Interim Decision

Dispute Codes:

CNR, CNC, MNDC, OLC, RP, ERP, RR, DRI, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, to cancel a 1-Month Notice to End Tenancy for Cause, and monetary compensation in the form a rent reduction for loss of quiet enjoyment, lack of repairs and devalued tenancy. The tenant was also seeking an order to force the landlord to make repairs and an order to force the landlord to comply with the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing the parties confirmed that the issue of the 10-Day Notice to End Tenancy for Unpaid Rent was resolved as the tenant had paid the arrears in full.

Preliminary Matters

Adjournment

At the commencement of the hearing the landlord, made a verbal request for an adjournment of the hearing because the landlord was extremely busy managing the rental property and attending to serious issues with the premises. No written request for an adjournment was received.

Rule 6.1 of the Rules of Procedure states that the Residential Tenancy Branch will reschedule a dispute resolution proceeding if “*written consent from both the applicant*

and the respondent is received by the Residential Tenancy Branch before noon at least three (3) business days before the scheduled date for the hearing.”

In this instance, the tenants had made application on July 4, 2013 and the hearing was scheduled for August 8, 2013.

In some circumstances proceedings can be adjourned after the hearing has commenced. However, the Rules of Procedure contain a mandatory requirement that the Dispute Resolution Officer must look at the oral or written submissions of the parties; consider whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose]; consider whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding; and weigh the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and assess the possible prejudice to each party.

At the hearing, the tenants were asked whether or not they would consent to the landlord's request that the matter be adjourned and the tenants stated that they were not amenable to the dispute resolution hearing being adjourned and reconvened at a later date.

I found that:

- the landlord did not submit a written request at least 3 days prior to the hearing,
- the applicant was not in agreement with an adjournment,
- the landlord had over two months to prepare for her application to be heard and to submit the necessary evidence and,
- that a delay would unfairly prejudice the tenants.

Accordingly, I found that there was not sufficient justification under the Act and Rules of Procedure to support imposing an adjournment on the other unwilling party and the landlord's request for an adjournment was denied. The hearing then proceeded as scheduled.

Issue(s) to be Decided

- Should the One Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to compensation for loss of value to the tenancy?
- Is an order to force the landlord to repair the unit warranted?

- Should the landlord be ordered to comply with the Act and Agreement?

Background and Evidence

There is no written tenancy agreement in evidence. When the tenancy began in June 2011, it was considered to be for a one-year fixed term. However, the tenancy has since converted to a month-to-month tenancy. The rent is \$1,564.50. A security deposit of \$750.00 was paid.

Submitted into evidence were copies of the Ten Day Notice to End Tenancy for Unpaid Rent and One-Month Notice to End Tenancy for Cause, a copy of a previous Dispute Resolution decision dated January 5, 2012, proof of service, written testimony, copies of communications and photographs.

The landlord testified that a One-Month Notice to End Tenancy for Cause was issued and personally served on the tenant on June 28, 2013. ~~March 1, 2012~~. The reasons given for ending the tenancy under section 47(1) of the Act were:

- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

(j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

In regard to the landlord's allegations listed above, the landlord stated that the tenant had allowed an unreasonable number of occupants in the rental unit. The landlord pointed out that the tenants had "subleased" a portion of the rental unit.

The tenant denied that they had ever vacated the unit and stated that they had never assigned nor sublet their rental unit it to others.

In regard to the landlord's position that the tenant significantly interfered with, or unreasonably disturbed, another occupant or the landlord, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the property at significant risk, the landlord testified that this referred to the fact that the tenant had been seen operating a welding torch on the premises and had also allowed guests to park on the lawn.

The tenant acknowledged that he had done some welding, but argued that this did not place the property at risk. With respect to the allegation that the tenant had placed the property at significant risk by parking on the lawn, the tenant stated that this was a rare occurrence and did not pose any threat to the property whatsoever.

In regard to the allegation put forth by the landlord that the tenant engaged in illegal activity that is likely to cause damage to the landlord's property, adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or will jeopardize a lawful right or interest of another occupant or the landlord, the landlord stated that the tenant had improperly stored firearms in the unit causing a risk to other residents.

The tenant stated that the gun in question was de-activated and was not illegally stored. The tenant stated that there are no other residents in a tenancy agreement with the landlord living in the building and no risk was created by the incident, which has been rectified.

In regard to the extraordinary damage caused to the rental unit and property, the landlord pointed out that the tenant had illegally hooked up a power connection in the basement.

The tenant stated that the landlord had requested that the tenant assist with some repairs by connecting a compressor to the power to blow out the irrigation lines. The tenant stated that he needed the power source in the basement, but there was no illegal tampering with the electricity.

According to the landlord, the tenant was accountable for causing flood damage to the unit through the tenant's negligent operation of the watering system. The landlord testified that, despite the fact that the tenant was aware that there was a leak in the underground piping, he proceeded to use the system and left a hose attached to a sprinkler running for an extended period of time, resulting in a flood and damage to the rental unit.

The tenant argued that he had reported the leak in the irrigation system to the landlord long before this occurrence and had assumed that the landlord made the requested repairs. The tenant testified that when he discovered that no repair was done, he did not use the leaking irrigation lines, but hooked up a sprinkler instead. The tenant testified that he was unaware that the building lacked adequate perimeter drains and did not realize that the property was subject to deficient grading that would cause serious flooding of the lower floor of the building.

In regard to the allegation made by the landlord stating that the tenant knowingly gave false information about the residential property to a prospective tenant or purchaser viewing the residential property, the landlord did not provide relevant testimony that spoke to this matter.

The landlord's position is that the tenant's conduct warrants an end to the tenancy and the Notice to End Tenancy for Cause was issued on the basis of the above transgressions.

The tenant's position is that the One Month Notice to End Tenancy for Cause issued by the landlord is not justified and should therefore be cancelled.

Tenant's Other Claims

With respect to the tenant's claim for monetary compensation, the tenant testified that the flooding of the unit had an adverse financial impact on the tenant with additional costs for hydro and seriously affected their use and enjoyment of a portion of the premises. The tenant also pointed out that they have not been able to utilize the yard due to the repair activities and the loss of the fence.

The tenant stated that they are prohibited from using a portion of the deck due to condition issues and that the numerous other repairs still need to be done, which have adversely impacted their quiet enjoyment of their home. The tenant is seeking a rent

abatement in compensation for the loss of facilities and devalued tenancy. The tenant has requested that their rent be abated 100% until the premises are completely restored.

The landlord testified that there is no reason to abate the rent as the repairs are now under way and should be completed without significant delay.

The tenant stated that the repairs have been subject to delays and this is why they are also seeking an order to force the landlord to restore the irrigation system, fix the fence, repair the deck, repair the eavestroughs and finish remediation of the damaged area in the basement.

The landlord stated that he is willing to progress with all of the required repairs.

The tenant is also concerned that the landlord still insists upon appearing on the premises without giving proper notice and the tenant is seeking an order that the landlord comply with the Act.

The landlord stated that he is prepared to fully comply with the Act and give the tenants 24 hours written Notice before the landlord or contractors access the property.

Analysis Notice to End Tenancy

I find that section 47, permits a landlord to give Notice to end a tenancy for cause.

I find that the landlord has failed to establish that the tenant sublet the unit or allowed an unreasonable number of occupants in a rental unit.

I further find that none of the landlord's evidence, even if accepted as true, met the threshold to terminate the tenancy based on the tenant significantly interfering with or unreasonably disturbing another occupant or the landlord of the residential property, seriously jeopardizing the health or safety or a lawful right or interest of the landlord or another occupant, or putting the landlord's property at significant risk.

I do not find that the tenant has engaged in illegal activity that is likely to cause damage to the landlord's property, is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

While I do find that the property is subject to extraordinary damage, I do not attribute this to any actions of the tenant as the landlord has not submitted adequate proof to establish this.

I further find absolutely no evidentiary support for the landlord's allegation that the tenant had knowingly given false information about the residential property to a prospective tenant or purchaser viewing the residential property;

Based on the evidence and the testimony, I find that the landlord has not submitted sufficient evidence that would justify termination of the tenancy under the stated grounds or support a valid reason for ending this tenancy. Accordingly, I find that the One-Month Notice to End Tenancy for Cause, must be cancelled.

Analysis - Monetary Claim for Devalued Tenancy

With regard to the portion of the tenant's application seeking monetary compensation, I find that an Applicant's right to claim damages from another party falls under section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

With respect to the tenant's claim that the value of the tenancy has been reduced due to the various repair issues and associated disruption and restricted use of the property, I accept the landlord's testimony that the repairs are in process and the property will eventually be fully restored.

That being said, I find that the tenant contracted to rent a home with the expectation that it would be livable and that all areas of the property would be available for the tenant's use and enjoyment.

I also find that section 32 of the Act imposes responsibilities on both the landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

I find that the tenant is entitled to expect the premises to meet the minimum standards as required under section 32 of the Act and this expectation has not been met by the landlord in this case. Accordingly, I find that this tenant is entitled to a rent abatement pending the completion of the outstanding repairs that have been brought forth at this hearing.

I find that the tenant is entitled to a rent abatement of \$400.00 per month effective as of May 1, 2013. Therefore the tenant is entitled to retroactive compensation of \$1,600.00 for rent already paid for May, June, July and August 2013.

I order that, going forward, this abatement continue and that the rent will be set at \$1,164.50 until the landlord finishes the repairs and makes a successful application for dispute resolution and proves to the satisfaction of the arbitrator that the renovations and repairs discussed above have been completed.

With respect to the tenant's allegation that the tenancy has been devalued because of harassment or interference by the landlord, I find that, under section 28 of the Act, a landlord is responsible for ensuring that a tenant's right to quiet enjoyment is protected.

Section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

I accept that the landlord will keep the commitment to follow the Act in this regard, failing which the tenant is at liberty to pursue further compensation in future

Based on the evidence, I hereby order that the One Month Notice to End Tenancy for Cause is cancelled and of no force nor effect.

I hereby order that the tenant's rent will be reduced from \$1,564.50 to \$1,164.50 and that the rental rate will continue until the landlord makes a successful application for dispute resolution by proving that the renovations and repairs discussed above have been completed.

I further grant the tenant a retroactive rent abatement totaling \$1,600.00, plus the \$50.00 cost of this application, for a total amount of \$1,650.00. I order that this be deducted, by the tenant, from future rent owed to the landlord until the award is paid.

The tenant's claim for compensation for loss of quiet enjoyment due to alleged harassment by the landlord, is dismissed *with leave to reapply* and the remainder of the tenant's application is dismissed *without* leave to reapply.

Conclusion

The tenant is partially successful in the application and the One-Month Notice to End Tenancy is cancelled, **a rent abatement is granted, the claim for compensation for loss of quiet enjoyment is dismissed *with leave* and the remainder of the application is dismissed *without leave*.** ~~the laundry facilities are no longer included in the tenancy and the rent is reduced accordingly, a rent abatement for past loss of laundry facilities is granted to the tenant, the landlord is ordered to install a lock and to communicate in written form and the tenant is ordered to pay the remaining security deposit and supply post-dated cheques to the landlord.~~

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: August 08, 2013

Corrected: September 23, 2013

Residential Tenancy Branch