



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Oliver Kiwanis Housing
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, RP, PSF

Introduction

This is an application filed by the Tenant for an order cancelling a notice to end tenancy issued for cause, an order for emergency repairs for health or safety concerns, an order for repairs to the unit, site or property and an order to provide services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served with the notice of hearing package. The Landlord has confirmed receipt of the Tenant's documentary evidence. The Tenant has confirmed receipt of the Landlord's documentary evidence. The Tenant has submitted numerous late evidence packages which were not received in time for this hearing.

The Tenant clarified in her direct testimony that her request to have the Landlord provide services or facilities is an error as there has been no such withdrawal of facilities or services. As such, no further action is required for this portion of the application.

The Landlord seeks an order of possession to end the tenancy.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling the notice to end tenancy?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order for emergency repairs?

Is the Tenant entitled to an order for repairs?

Background and Evidence

Both parties confirmed that the Tenant was served with a 1 month notice to end tenancy issued for cause dated September 4, 2013. The Tenant states that she received the notice posted on her rental unit door on September 5, 2013 and the Landlord states that it was personally on the Tenant on September 4, 2013. The Landlord stated that she was unable to provide any proof of service for the 1 month notice to end tenancy.

The 1 month notice to end tenancy dated September 4, 2013 shows an effective date of September 30, 2013, which the Landlord concedes is an error and states as per the Act that this effective vacancy date can be automatically changed to October 31, 2013. The notice displays two reasons for cause selected by the Landlord.

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord states that it has been reported to her that there are people moving back and forth from the Tenant's rental unit. The Landlord also states that she has received two notices to end tenancies from other Tenants. The Landlord also states that she believes that there is drug activity going on at the rental unit, but is unable to provide any details as she has not investigated the issue or received any complaints from any other tenants.

The Tenant also seeks an order for emergency repairs as there is mold in the basement. The Landlord disputes this. The Tenant states that the mold was first reported verbally in voice messages to the Landlord on May 18, 2013 stating that there was water in the basement. The Landlord disputes that any notification was given regarding mold until she received a letter dated September 1, 2013 which was received as part of the Tenant's evidence package. The Landlord states that since receiving the letter a mold assessment was made on October 15, 2013 and a report received dated October 16, 2013. The report states that "mould growth was confirmed to be present on the drywall wall to the North of the leaking West window on the west side of the basement and on the wood sill plate beneath the drywall wall." "Analysis of the air samples collected in the basement, main floor and second floor indicate that the air quality was not being significantly impacted by mould growth..." The Landlord states that the process for dealing with this issue has already begun.

The Tenant also seeks two orders for repairs. The first being to fix the leak in the basement which she states is the partial cause of the mould growth in the basement.

The Landlord disputes this stating that there has been no return of water leaking in the basement since the water irrigation system was shut off in October. The Tenant states that the original leak was fixed on July 5, 2013, but that there has been subsequent water leaking since. The Tenant refers to the assessment report by Levelton which states, "investigate and rectify the cause of moisture penetration and implement drying procedures as soon as possible to reduce moisture content of all building material to below the threshold value capable of supporting mould growth and prevent further fungal growth."

The Tenant also seeks an order for the Landlord to replace the blinds in a secondary bedroom which she states is covered in mould. The Landlord disputes this stating that a recent walk-thru revealed no mould, but agreed to attend the rental unit and inspect the blinds and if necessary replace the blinds. The Tenant stated that she was content with this resolution.

Analysis

I find on a balance of probabilities that the Landlord has failed to provide sufficient evidence of any details for the reasons for cause selected. The Landlord has admitted to not investigating any of the selected issues nor has she received any complaints from any other tenants regarding this tenancy. As such, the Landlord's 1 month notice to end tenancy dated September 4, 2013 is dismissed for lack of evidence. The Tenancy shall continue.

As the Landlord has received a mould assessment report and is in the process of implementing the recommendations given by Levelton, I find that the Tenant has established grounds for this emergency repair. I order that the Landlord follow through on the recommended steps provided by Levelton as soon as possible to rectify this issue.

I find on a balance of probabilities that the Tenant has established a claim for repairs to the basement to determine the source of moisture penetration as per the findings of the Levelton assessment report. The assessment was conducted in October and the report generated which describes a moisture penetration that the Landlord is unable to explain the cause of. As such, I order that the Landlord follow through with the noted recommendations in locating and remediating the moisture problem in the basement as per the Levelton report recommendations..

Conclusion

The Tenant's request for an order to cancel the notice to end tenancy dated September 4, 2013 is granted. The Tenancy shall continue.

The Tenant's request for emergency repairs and repairs to investigate and rectify the mould and moisture penetration are granted keeping in following the recommendations provided by the Levelton report.

The Landlord has agreed to attend to assess and replace if necessary the blinds in the secondary bedroom.

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: October 31, 2013

Residential Tenancy Branch

