



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, MNDC, MND, MNSD, OLC, ERP, PSF, LRE, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The tenant made application on October 07, 2013. He applied for a monetary order for compensation in the amount of \$2,000.00, for an order directing the landlord to comply with the *Act*, make emergency repairs and provide services. The tenant also applied for conditions to be set on the landlord's right to enter.

During the hearing, the tenant stated that he had applied in error for emergency repairs and for an order directing the landlord to comply with the *Act* and provide services. Accordingly, this application only dealt with the tenant's application for compensation.

The landlord applied for an order of possession pursuant to a notice to end tenancy for cause, served on the tenant on October 21, 2013. Since the tenant had already made application prior to receiving the notice to end tenancy, he had not applied to dispute the notice to end tenancy. However during the hearing the tenant requested that his application be amended to include his dispute of the notice to end tenancy. Due to the timing of receipt of the notice, I agreed to amend the tenant's application to include a dispute of the notice to end tenancy.

The landlord also applied for a monetary order for compensation, to keep the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Does the landlord have cause to end the tenancy or should the notice to end tenancy be set aside? Are the parties entitled to their monetary claims for compensation?

Background and Evidence

The tenancy started on May 08, 2013 for a fixed term of one year. The rent is \$625.00 per month due on the last day of each month. The tenant paid a security deposit of \$325.00. The rental unit is a suite located on the first floor of the landlord's house. The landlord lives upstairs.

Both parties complained about the conduct of the other. The landlord stated that the tenant smokes or lights incense inside the unit which causes health issues for the landlord. The tenant denied indulging in this activity.

The landlord stated that she was away one weekend in early June and came back to find that the tenant had sealed off the patio with pink plastic and while installing this cover, he had damaged the walls and railing with large nails. The landlord filed photographs to support her testimony. The tenant agreed that he had covered the patio without obtaining the landlord's permission. The landlord stated that she asked the tenant to remove it at least twice and as of the date of the hearing, he had not.

The landlord also stated that the tenant damaged a screen door by installing a latch. The tenant argued that there was a latch already installed and since it was broken, he simply replaced it. The tenant agreed that he had not informed the landlord about a broken latch or asked for permission to replace it.

The landlord stated that the tenant asked for permission to change a light fixture and the landlord refused to let him do so. Shortly after, sometime in July, the tenant complained of non functional switches and lights throughout the unit. The landlord visited to check it out and found that some light fixtures were indeed not working. Both parties agreed that all fixtures were working at the start of the tenancy and this was documented in the move in inspection report, filed into evidence.

On October 20, 2013, the landlord hired an electrician to fix the problem. The electrician filed a report stating that a wire inside a switch box was cut. The report also states that the tenant has 4-6 extension cords with about 9-12 appliances connected to these cords, which creates a risk of overheating and electrical fire. The tenant denied having cut the wire, but complained that the problem started in July and the landlord only fixed it in October, leaving him without some lights for approximately three months.

On October 21, 2013, the landlord served the tenant with a one month notice to end tenancy for cause. The reason for the notice is that that tenant seriously jeopardized the health or safety or lawful right of the landlord.

The tenant stated that the landlord falsely accuses him of smoking and bangs on his door at will. Other complaints from the tenant include a onetime incident regarding dog faeces outside his door, stomping by the landlord late at night and a broken latch on the gate to the back yard. The landlord denied stomping on her floor at night and also stated that she fixed the latch twice and it continues to break down.

The landlord is claiming compensation in the amount of \$5,000.00 for damage to her reputation caused by the tenant speaking badly about the landlord to neighbours and falsely accusing her of stomping. A portion of the landlord's claim is for lost wages from missed work due to stress caused by the tenant's behaviour. Other than a letter from her employer, the tenant did not provide adequate documentary evidence to support her claim.

The tenant stated that that his claim of \$2,000.00 for compensation was from the disturbances caused by the landlord from stomping and knocking on his door at odd hours. He also stated that the landlord did not pick up after the dog after he notified the landlord.

Analysis

In order to support the notice to end tenancy, the landlord must prove the grounds alleged, namely that the tenant seriously jeopardized the health or safety or lawful right of the landlord.

I accept that the tenant did jeopardize his safety and that of the landlord by using multiple extension cords and plugging in multiple appliances. However the landlord did not act on the tenant's complaint in a timely manner and only discovered this hazardous use of electricity, approximately three months later. Upon discovering the issue the landlord served the tenant with a notice to end tenancy.

Both parties agreed that upon learning of the problem, the tenant made immediate efforts to rectify the situation and there have been no complaints since then.

Even though I find that the tenant did create a hazardous situation, it appears that the tenant rectified the situation immediately after the landlord notified him of the safety issues. Therefore I am not satisfied that the actions of the tenant justify bringing this tenancy to an end.

Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated October 21, 2013. As a result, the tenancy shall continue in accordance with its original terms.

The tenant would be wise to refrain from overloading the electrical system. I find it timely to put the tenant on notice that, if such behaviours were to occur again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before an Arbitrator, for consideration.

Landlord's claim for compensation - \$5,000.00

The landlord stated that the tenant has caused damage to the rental unit by installing a plastic cover over the patio and installing a latch on the screen door. The landlord stated that the tenant also has falsely accused her of stomping on her floors at night and has bad mouthed the landlord to the neighbours causing damage to her reputation. While I accept the landlord's testimony that the tenant caused damage to the rental unit, I am ordering the tenant to fix the damage. The landlord is at liberty to make a claim against the security deposit at the end of tenancy, in the event the damage is not fully fixed.

The landlord did not file adequate evidence to support her claim for the damage to her reputation and therefore I dismiss the landlord's claim for compensation.

Tenant's claim for compensation - \$2,000.00

The tenant stated that the landlord falsely accused him of smoking in the rental unit. He also stated that the landlord bangs on his door in the early morning hours. The tenant agreed that the dog faeces incident was an isolated one.

I order the landlord to provide at least 24 hours notice to the tenant prior to entering or knocking on the door of the rental unit. I find that the tenant has not provided adequate evidence to support his claim for compensation and therefore I dismiss his claim.

Based on the sworn testimony of both parties, I find that in most respects there is vast contrast in the testimony of the tenant and landlord and the relationship has progressively deteriorated over the term of the tenancy making resolution of issues, at best, frustrating for both parties. Given the hostile nature of the relationship that exists between the landlord and the tenant herein, both the landlord and the tenant are hereby ordered to comply with all relevant provisions of the *Residential Tenancy Act*, the Regulations passed pursuant thereto and the terms of their tenancy agreement.

I order the landlord to;

1. Fix the latch on the gate to the back yard.
2. Provide at least 24 hours notice to enter the rental unit in compliance with section 29 of the *Residential Tenancy Act*.
3. Refrain from causing noise disturbances at night

I order the tenant to:

1. Remove the plastic cover from the patio and restore the damage caused by its installation
2. Remove the latch installed on the screen door and repair damage caused by its installation
3. Do not smoke or burn incense inside the rental unit

The landlord has not proven her claim and therefore must bear the cost of filing her application.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue in accordance with the terms of the tenancy agreement.

The claims for compensation made by both parties are dismissed.

The parties must carry out the orders as recorded above immediately.

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: November 15, 2013

Residential Tenancy Branch

