



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR CNL OPL FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel two notices to end tenancy, one for unpaid rent pursuant to section 46 and one for landlord's use of the property pursuant to section 49 to effect repair ; and
- b) An Order that the landlord comply with the Act and make repairs

Service:

The section 49 Notice to End Tenancy is dated October 30, 2013 to be effective December 31, 2013 and the tenant agreed it was served personally on him on October 30, 2013. The section 46 Notice to End Tenancy for unpaid rent is dated November 2, 2013 to be effective November 13, 2013 and the tenant confirmed it was served by posting it on his door. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Preliminary Issue:

The landlord requested an amendment to the Application to add the name of his partner as a respondent. The applicant tenant had no objection so the amendment is granted.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and/or he requires the property to be vacant to effect necessary repairs so it is necessary to end this tenancy or has the tenant demonstrated that the notices to end tenancy should be set aside and the tenancy reinstated? Has the tenant proved on a balance of probabilities that certain repairs are necessary and the landlord must be ordered to do them? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in May 2013 on a month to month tenancy, rent is \$600 a month and a security deposit of \$300 and a pet damage deposit of \$200 were paid. This is a two bedroom duplex unit. In the hearing, the parties agreed that the tenant had paid the rent within the allowed time after receiving the Notice to End Tenancy for unpaid rent so that Notice was void.

The landlord served a Notice to End Tenancy under section 49 of the Act as he intends to repair the unit in a way that requires the unit to be vacant. The landlord said there is a moisture problem and they want to remove drywall and repair it properly. The tenant has refused permission for the landlord to repair the wall while he is occupying the premises as he classifies the moisture stain as black mould and says it is harmful to his and his baby's health. The landlord offered him occupancy of an upstairs vacant unit but he said it had some problems such as a gas leak and mould. The landlord denies it has any problems. The tenant wants to be accommodated in a hotel at the landlord's expense instead. The landlord said there was also the problem of the large unrestrained dog of the tenant which makes him very nervous. The landlord requests an Order of Possession if the tenant is unsuccessful.

The tenant also asks for some rebate of rent for lack of repair. He said he was without an oven for at least a month. The landlord said that he was shown how to operate the oven in October, then on November 20, 2013, the landlord called and made an appointment for a technician to change the stove. The tenant did not answer the door or telephone so the landlord had to pay a bill for the service call with no result. The tenant agreed that the appointment had been set but said he got some work and could not be there. He was expecting the landlord to call to confirm if the other stove worked; he did not know they would do both things on the same day. He estimates he was about a month without a working oven.

The tenant also notes problems with windows that won't close from the inside and a hole in the floor. The landlord said that things worked when the tenant rented and they did fix the one window that needed repair.

Included with the evidence are Notices to End Tenancy, letters between the parties and photographs provided by the tenant.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the landlord has satisfied the onus. Although the tenant claimed the problem was black mould and repair would be harmful to the health of his baby and himself, I find insufficient evidence to support this allegation. I find the tenant's letters make it clear that he is unwilling to let the landlord enter to do the necessary repairs, even if the landlord supplies a vacant suite for him to occupy while they are done. I find insufficient evidence to support his allegation that the alternate suite has problems with a gas leak or mould. I find no obligation in the Act for the landlord to supply the tenant with hotel accommodation while repairs are done. I find also that the tenant has a large dog which he does not restrain so the landlord cannot enter to do repairs when he is absent. In summary, I find the landlord has good cause to evict the tenant.

Pursuant to section 55, an Order of Possession effective December 31, 2013 is issued to the landlord as he requested this orally in the hearing. **As a section 49 Notice to End Tenancy was issued successfully to the tenant, the tenant is to receive one month's free rent in compensation. If the tenant has already paid rent for December, the rent must be refunded to him in accordance with sections 50 and 51 of the Act.**

In respect to the claim of the tenant for retroactive rent rebate for lack of repair, I find he was without an oven for about a month, although the stove top worked. Although there was some contention that it may have been because he did not wait long enough for the gas to ignite, I find the tenant's evidence more credible that there was a significant problem with the oven. I find his complaints in his letters from October 16, 2013 support his evidence. In respect to his claim regarding lack of window repair, I find his evidence more credible as one of the landlord's letters states "#4 main bedroom and living room windows are old and cannot be fixed. It is an old house". For lack of a properly working oven for one month, I find the tenant entitled to \$50 rent rebate and for lack of window repair, I find him entitled to \$100 for the inconvenience of having to go outside for months to make the closing mechanism work. As the tenant has paid rent for November 2013 and is entitled to free rent in December, 2013, I find him entitled to a monetary order for \$150 as a retroactive rent rebate. A monetary order is enclosed.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on December 31, 2013.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on December 31, 2013. An Order of Possession is issued to the landlord and enclosed.

I HEREBY ORDER THAT the tenant is entitled to a free month's rent in December 2013 pursuant to sections 49 and 51. If rent for December has already been paid, I HEREBY ORDER the landlord to refund that rent to the tenant forthwith.

Furthermore, I find the tenant entitled to a monetary order for \$150 as a retroactive rent rebate for lack of repair. It is enclosed.

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: December 18, 2013

Residential Tenancy Branch

