



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, RP, RR, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property and for an order directing the landlord to carry out repairs and provide a rent reduction. The tenant also applied for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties acknowledged receipt of evidence submitted by the other.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to have a close member of his family move into the rental suite? Has the landlord carried out the required repairs?

Background and Evidence

The tenancy started on September 01, 2013 for a fixed term ending February 28, 2014. A copy of the tenancy agreement was filed into evidence. At the end of the term the tenancy would continue on a month to month basis. The monthly rent is \$2,500.00 payable on the first of the month. Both parties agreed that the rent was reduced to accommodate the condition of the home.

Prior to entering into a tenancy agreement the parties discussed the terms of the tenancy agreement and negotiated the amount of rent, by email correspondence. The tenant filed copies of the correspondence between the parties. The tenant indicated in this correspondence that she was looking for a long term tenancy and the landlord's agent responded that he was looking for the same and stated "*you should match*".

The addendum to the tenancy agreement refers to the conditions attached to signing a new *"two year renewable agreement"* if the tenant fulfilled her promises to replace the barn roof and renovate the secondary house. During one of the many conversations between the tenant and the landlord's agent, the agent said to the tenant *"Take it easy. You don't have to finish everything so quickly coz you have many years to stay have a break and take a dive into the pool"*

The tenant stated that the rental unit was rented with a pool and two fireplaces. The tenant agreed that she was responsible for cleaning the pool. Shortly after the tenant moved in, the chimneys were swept and a broken damper was found in the fireplace located in the living room. The tenant requested the landlord in writing on October 08, 2013 to have the chimney repaired. The landlord refused to do so and offered to board the fireplace up and provide electric heaters to the tenant.

The tenant also found that the pool pump was broken and requested the landlord in writing on October 08, 2013, to repair or replace it. The landlord refused to do so and suggested the elimination of the pool by filling it with dirt.

The tenant stated that due to the landlord's refusal to repair both the chimney and the pool pump, she was without the use of both for the duration of the tenancy.

The tenant stated that on February 15, 2014, the parties met to discuss a lease renewal. The landlord agreed that he had offered to enter into a six month lease as long as the tenant agreed to allow him to board the fireplace and fill the pool with dirt. The tenant did not agree to these terms and requested that these items be repaired. On March 05, 2014, the landlord served the tenant with a notice to end tenancy for landlord's use of property.

The landlord stated that he intends to allow his son and his son's common law wife to move into the property. The couple are currently in China and will return to Canada in June 2014. The landlord stated that renovations need to be completed prior to the arrival of their son and his partner.

The tenant has alleged the landlord is issuing the notice in bad faith. The tenant's position is that the landlord served the notice to avoid his obligation to have the chimney and the pool pump repaired. The tenant stated that the landlord was informed about this shortly after the start of tenancy and refused to carry out repairs. The tenant stated that both the pool and fireplace cannot be used and is claiming a rent reduction for the loss of these services

Analysis

Section 49 of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith.

Based on the documents filed into evidence and the oral testimony of both parties, I find that the landlord intended to rent this unit to a long term tenant. I further find that on February 15, 2014, the landlord offered to enter into another six month lease with conditions that relieved him of his responsibility to repair the chimney and pool pump. When the tenant refused to accept the conditions, the landlord served the tenant with a notice to end tenancy for landlord's use of property.

Upon consideration of the evidence of each party, it is clear that the repair requirements were the incentive for the landlord to want to take over possession of the unit. Given these circumstances, I find that on a balance of probabilities, it is more likely than not that the landlord did not act in good faith when he served the tenant with the notice to end tenancy for landlord's use of property, just three weeks after he offered to enter into another fixed term tenancy of six months. Therefore I set aside the notice to end tenancy. The tenancy will continue on a month to month basis and on the original terms of the tenancy agreement.

Based on the sworn testimony of both parties I find that the fireplace and pool were services that were included in the rent. However their state of disrepair and the landlord's refusal to restore them to a condition in which they could be used by tenant, resulted in the loss of use of these services

Accordingly, I find that the tenant is entitled to compensation for the inconvenience and additional cost of heating that she endured for the months of tenancy without the use of the fireplace and the pool. Since these items have not been fixed, the tenant continues to suffer a loss of these services. The tenant has been without these services from the start of tenancy. Since the tenant informed the landlord on October 08, 2013, I will use this date as the start date for the loss of service of the fireplace and the pool.

I find that the value of the tenancy has been reduced as a result of the loss of the use of the fireplace and the pool. The tenant has applied for a rent reduction for the loss of these services but has not provided a monetary value of her claim for reduced rent. In determining the amount by which the value of the tenancy has been reduced; I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Based on the evidence and oral testimony, I find it appropriate to award the tenant a rent reduction of \$100.00 per month until the fireplace and pool pump have been repaired and are functional. Since these items have not been in use since October 2013, I award the tenant a reduction of \$100.00 for each month starting October 2013.

The rent starting May 01, 2014 will be \$2,400.00 per month and will continue to remain at this amount until the fireplace and the pool have been restored to full functionality.

As the tenant has been successful, I find that the tenant is entitled to recovery of the filing fee of \$50.00. Overall the tenant has established a claim of \$700.00 resulting from a rent reduction for the months of October 2013 to April 2014. I allow the tenant to make a onetime deduction of \$750.00 from a future rent.

To clarify my decision, assuming that the tenant paid full rent of \$2,500.00 for April 2014, the tenant will pay \$1,650.00 on May 01, 2014 and then \$2,400.00 for the following months. Once the required repairs are complete then the rent will return to its full value of \$2,500.00

Conclusion

The notice to end tenancy is set aside and the tenancy will continue on a month to month basis, as per the terms of the tenancy agreement.

The tenant will pay rent in the amount of \$1,650.00 for May 2014 and then \$2,400.00 for subsequent months until the repairs are completed. Upon completion, the rent will return to its full amount of \$2,500.00

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: April 24, 2014

Residential Tenancy Branch

