



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP, LRE, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a Notice to End Tenancy – Section 49;
2. An Order for the Landlord’s compliance – Section 62;
3. An Order for repairs – Section 32;
4. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Tenant’s evidence that the Landlord was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Landlord did not participate. The Tenant was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to repairs?

Is the Tenant entitled to an order suspending the Landlord’s right to enter the rental unit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 12, 2014 on a fixed term to expire May 12, 2015. Rent of \$300.00 is payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$300.00 as a security deposit.

On May 28, 2014 the Tenant received a two month notice to end tenancy for landlord's use (the "Notice"). The Tenant argues that since there is a fixed term tenancy the Landlord cannot end the tenancy until after the fixed term and the Tenant seeks a cancellation of the Notice.

When the Landlord entered the unit on May 28, 2014 the Landlord kicked the door of the dishwasher causing exterior damage that does not affect the operation of the dishwasher. The shower water flow out of the unit and the switch is not working properly and the alarm system cover is missing. The Tenant has requested these repairs and has called the Landlord several times about the repairs but the Landlord has not responded to the Tenant. The Tenant requests an order for repairs.

The Landlord enters the unit without the Tenant's permission and on May 15 or 16, 2014 the Landlord entered the unit while the Tenant was in the bathroom. The police were called on this occasion. The Tenant requests that the Landlord comply with the Act and provide the required notice before entering the Tenant's unit.

Analysis

Section 19 of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Based on the undisputed evidence that the monthly rent is \$300.00, I find that the security deposit may only be as great as \$150.00. As the Landlord collected \$150.00 in excess of this amount, I find that the Tenant is entitled to deduct this amount from rent payable and I order the Tenant to reduce August 2014 rent by **\$150.00**.

Section 49 of the Act provides that where the tenancy agreement is a fixed term agreement a landlord may end the tenancy for landlord's use not earlier than the date specified as the end of the tenancy. As the Notice purports to end the tenancy prior to the fixed term date, I find that the Notice is not valid and the Tenant is therefore entitled to a cancellation of the Notice. The tenancy continues as provided under the tenancy agreement.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Based on the undisputed evidence that the unit requires repairs, I order the Landlord to make repairs to the dishwasher, shower, and alarm cover by no later than August 15, 2014. Should the Landlord fail to make these repairs, the Tenant has leave to reapply for compensation.

Section 29 of the Act provides that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;
 - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Section 90 of the Act provides that a document posted on the door of a unit is deemed to be received on the 3rd day after it is attached to the unit. Based on the undisputed evidence of the Tenant I find that the Landlord has entered the unit without required notice or right. I therefore order the Landlord to comply with the Act's requirements for notice periods and service provisions as set out above if the Landlord wishes to enter the unit for a valid reason. Should the Landlord fail to comply with this order or the Act, I give the Tenant leave to reapply for compensation

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$50.00** filing fee and I order the Tenant to reduce August 2014 rent payable by this amount.

Conclusion

The Notice is cancelled.

I order the Tenant to reduce August 2014 rent by **\$200.00**.

I Order the Landlord to comply with the Act for entries into the unit as set out above.

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: July 23, 2014

Residential Tenancy Branch

