



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, OPC, CNR, CNC, FF

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and to set aside a Notice to End Tenancy for Unpaid Rent. The Tenant stated that sometime in May of 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Cause, an Order of Possession for Unpaid Rent; and to recover the fee for filing an Application for Dispute Resolution. The Agent for the Landlord stated that on May 02, 2014 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant, via registered mail. The Landlord submitted a copy of a Canada Post receipt that corroborates this statement.

The Tenant stated that she did not receive this package, although she was aware that the Landlord had filed an Application for Dispute Resolution. She stated that she did receive the Landlord's Application for Dispute Resolution on June 17, 2014 and she is prepared to respond to the Landlord's claims at these proceedings.

On June 11, 2014 and June 13, 2014 the Landlord submitted numerous documents to the Residential Tenancy Branch, which the Landlord wishes to rely upon as evidence. The Agent for the Landlord stated that these documents were personally served to the Tenant on June 17, 2014. The Tenant acknowledged receipt of the documents and they were accepted as evidence for these proceedings.

On June 13, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Agent for the Landlord on June 13, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 20, 2014 the Tenant submitted numerous documents to the Residential Tenancy Branch, which the Tenant wishes to rely upon as evidence. The Tenant stated that these documents were personally served to the Agent for the Landlord on June 21, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Residential Tenancy Branch Rules of Evidence stipulate that evidence must be served five days prior to the start of the proceedings. As these proceedings started on June 23, 2014, no documents that were submitted after that date will be considered as evidence at these proceedings.

There was insufficient time to conclude the hearing on June 23, 2014. Prior to the conclusion of that hearing the Agent for the Landlord indicated that she had additional testimony to provide so the hearing was adjourned.

The hearing was reconvened on September 02, 2014. At the conclusion of this hearing the Agent for the Landlord confirmed that all relevant evidence to support the Notices to End Tenancy had been submitted. Prior to the conclusion of the reconvened hearing the Tenant indicated that she had additional testimony to provide so the parties were advised the hearing would be adjourned.

Both parties were represented at both hearings. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

I note that a significant amount of testimony was provided during these hearings, not all of which is referenced in this decision. Some issues, such as whether or not the Tenant was told the Landlord wished to sell the house, was not referenced as it is not relevant to my decision in this matter.

I note that a significant amount of documentary evidence was submitted for these proceedings. While these documents have been reviewed, only those documents that are particularly relevant to my decision have been referenced in this decision.

Preliminary Matter

Upon reviewing the Landlord's evidence at the conclusion of the hearing on September 02, 2014, I determined that the Landlord had failed to establish sufficient grounds to end this tenancy. As the burden of proving that the tenancy should end rests with the Landlord and the Agent for the Landlord had clearly indicated that she had no further evidence to present, I find it is not necessary to hear further arguments/testimony from the Tenant. As I determined that the Landlord had not established grounds to end the tenancy, there is no need for the Tenant to make further submissions in this regard.

I therefore concluded that an adjournment was not necessary and my decision was rendered on the basis of the information provided during the first two hearings.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, or the Notice to End Tenancy for Unpaid Rent, served pursuant to section 46 of the *Act*, be set aside or should the Landlord be granted an Order of Possession?

Background and Evidence

The Landlord and the Tenant agree that the tenancy began on January 07, 2011 and that the Tenant agreed to pay monthly rent of \$2,950.00.

The Landlord and the Tenant agree that as a result of a flood in the basement of the rental unit the Landlord and the Tenant agreed that she would only have to pay 50% of the rent for a period of time. The Agent for the Landlord stated that the agreement was that the rent would be reduced by 50% only for the months of March and April. The Tenant stated that the agreement was that the rent would be reduced by 50% until the repairs in the basement were complete.

The Landlord submitted a copy of a document signed by the Tenant and the Agent for the Landlord, dated March 27, 2014. This agreement indicates that the rent will be reduced by 50% starting March 01, 2014 "until restoration is complete". The agreement indicates that the Tenant will provide access to the rental unit between 8:30 a.m. and 4:00 p.m. from Monday to Friday until April 25th. The agreement indicates that if the Tenant fails to provide access to the unit during that period the Landlord will deem it necessary to end the tenancy.

The Landlord and the Tenant agreed that rent of \$1,475.00 has been paid for March, April, May, and June of 2014, which is 50% of the rent. The Agent for the Landlord stated that on June 02, 2014 a Ten Day Notice to End Tenancy for Unpaid Rent was posted on the door of the rental unit. The Tenant stated that she located this Notice on June 03, 2014.

At the hearing on September 02, 2014 the Agent for the Landlord stated that the repairs in the basement are now complete, but the Tenant is still not paying full rent. The Tenant stated that the repairs are not complete and that there are a variety of deficiencies with the unit, including improperly installed panelling, inadequate electrical repairs, drywall in need of mudding and painting, and an improperly installed vanity.

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the Tenant on April 14, 2014, which declared that the Tenant was required to vacate the rental unit by May 31, 2014. The reasons cited for ending the tenancy on the Notice to End Tenancy were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time; and that the Tenant has assigned or sublet the rental unit without written consent.

During the hearing the Agent for the Landlord stated that the Landlord does not now wish to end the tenancy because the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time or that the Tenant has assigned or sublet the rental unit without written consent. She stated that the primary reason for ending the tenancy is that the Tenant is interfering with the restoration of the rental unit.

The Landlord and the Tenant agree that the Agent for the Landlord asked the Tenant to help coordinate the repairs to the basement when it flooded on March 01, 2014, as the Agent for the Landlord was out of town, and that the Tenant had coordinated repairs on previous occasions.

The Agent for the Landlord initially stated that she assumed responsibility for coordinating the repairs when she returned to the city of March 18, 2014. The Tenant stated that she was never told the Agent for the Landlord was taking over full responsibility for the repairs. The Agent for the Landlord subsequently stated that she did continue to allow the Tenant to make some arrangements with the contractors, as the Tenant did not want anyone in the unit when she was home it was more efficient to allow the Tenant to schedule appointments.

In support of the One Month Notice to End Tenancy the Agent for the Landlord stated that the Tenant and the first project manager for the restoration had a variety of conflicts, which resulted in the project manager being replaced. The Tenant agreed that she had a variety of conflicts with the first project manager, as she believed that project manager was not properly notifying her of upcoming repairs and was misrepresenting their communications. She stated that she did not ask for the first project manager to be replaced, although she did ask that all communications with her be done in writing. The parties agree that as a result of this conflict the first project manager was replaced.

In support of the One Month Notice to End Tenancy the Agent for the Landlord stated that on March 12, 2014 arrangements had been made to remove asbestos from the rental unit and that the arrangements were cancelled at the last moment. She stated that she was not directly involved in the scheduling of this remediation so she is not certain of how/why it was cancelled.

The Tenant stated that sometime after 10:00 p.m. on March 11, 2014 the project manager informed her that they would be accessing the rental unit in the morning of

March 12, 2014. She stated that she advised the project manager that they could not access the unit on that date due to the "late notice".

The Landlord submitted an email from the project manager to the Tenant, in which the project manager declared that when she spoke with the Tenant on March 07, 2014 she informed the Tenant that they would be at the rental unit for an "abatement" on March 12, 2014.

In support of the One Month Notice to End Tenancy the Agent for the Landlord stated that on April 11, 2014 she was informed that the Tenant was refusing to allow contractors to place construction materials in the rental unit. She stated that she attended the rental unit and was advised by the Tenant that she did not want all of the materials delivered because she wanted drywall installed instead of panelling; because they were delivering the wrong vanity and the Tenant did not want the vanity that had been delivered; and because she wanted a commitment that work would not be done on the weekend. She stated that she told the Tenant that she wanted this particular vanity installed and the Tenant repeatedly told her it was not the vanity she wanted.

The Tenant stated that the incident the Landlord referred to actually occurred on April 09, 2014. She stated that they did have a lengthy discussion about the vanity. She stated that the Agent for the Landlord did not tell her that she wanted the vanity that had been delivered installed, but she did tell her this was the vanity approved by the insurance company. She stated that she was simply trying to be helpful as she did not believe the Agent for the Landlord understood that the insurance company would be willing to provide a nicer vanity if it was requested by the Agent for the Landlord. She stated that she agreed to accept all of the materials being delivered on this date, with the exception of the vanity, however she was told that none of it would be delivered if the vanity was not delivered.

The Agent for the Landlord stated that she told the Tenant she wanted these materials delivered, including the vanity, but the Tenant refused to allow the delivery. She stated that none of the materials were delivered because the project manager did not wish to deliver only a portion of the materials. She stated that all of the materials were returned to the store.

The Tenant stated that the Agent for the Landlord did not ask to put the construction materials in the house and that she did not, therefore, need to decline that request. She stated that she told the Agent for the Landlord that the vanity should not be accepted for delivery.

The Landlord submitted a copy of an email from the project manager. The email has a hand-written date of April 09, 2014. In the email the project manager declares that they are withdrawing their services and that on that date the Tenant denied three carpenters and a delivery person access to the rental unit. He noted that the items being delivered were 22 sheets of panelling, a vanity, a vanity top, trim, and faucet.

The Tenant argued that she has spent “countless days” coordinating the repairs and that her tenancy should not end even if she made a mistake on April 09, 2014.

The Landlord and the Tenant agree that on April 16, 2014 she sent the Landlord an email in which she agree to have a lock box installed; she agreed not to interact with any tradespeople or the project manager; that she will install a lock on the “door to the upstairs”; and that she will not go “into the downstairs”.

The Agent for the Landlord stated that repairs to the rental unit did not resume after April 16, 2014, in part, because they were waiting for arbitration.

The Agent for the Landlord stated that repairs to the rental unit did not resume after April 16, 2014, in part, because the Landlord did not have a key for the lock box. The Tenant stated that she offered the Agent for the Landlord a key a few days prior to April 16, 2014 and that she offered it again on April 16, 2014. The Agent for the Landlord stated that she was offered a key on April 16, 2014 but she did not take the key or install a lock box because she was waiting for arbitration.

The Agent for the Landlord stated that repairs to the rental unit did not resume after April 16, 2014, in part, because the insurance company would not continue until they had a “100% guarantee” they could have access to the rental unit.

The Agent for the Landlord stated that repairs to the rental unit did not resume after April 16, 2014, in part, because she had “lost faith” in the Tenant.

The Tenant submitted a letter from her mother, which corroborates much of the testimony provided by the Tenant, although it appears that much of the information provided by the mother is hearsay.

At the hearing on June 23, 2014 the Tenant gave the Landlord permission to enter the rental unit between 8:00 and 4:00 p.m., between Monday and Friday. The Landlord and the Tenant agreed that the contractor resumed work in the rental unit on July 04, 2014.

Analysis

On the basis of the document dated March 27, 2014, I find that the Landlord agreed to reduce the rent by 50% (from \$2,950.00 to \$1,475.00) from March 01, 2014 until restoration to the rental unit was complete. Although this document clearly informs the Tenant that the Landlord intends to end the tenancy if the Tenant fails to provide access while repairs are being completed, it does not declare that the rent reduction will be revoked if the Tenant fails to provide access.

Although the Agent for the Landlord contends that the agreement was only for March and April, I find this is inconsistent with the testimony of the Tenant and the written document. I find that the written document is the most reliable evidence.

On the basis of the undisputed evidence, I find that since the restoration was not completed by June 01, 2014. I therefore find that rent of \$1,475.00 was due for March, April, May, and June of 2014. On the basis of the undisputed evidence, I find that rent of \$1,475.00 was paid for March, April, May, and June of 2014. I therefore find that rent was not outstanding on June 01, 2014.

A landlord has the right to end a tenancy pursuant to section 46 of the *Act* only when rent is due. As no rent was due on June 01, 2014, I find that the Landlord did not have the right to serve the Tenant with the Ten Day Notice to End Tenancy for Unpaid Rent, dated June 02, 2014. I therefore grant the Tenant's application to cancel the Ten Day Notice to End Tenancy for Unpaid Rent and I dismiss the Landlord's claim for an Order of Possession based on this Notice.

To provide some clarity to this tenancy, I find that the Tenant is entitled to the rent reduction until such time as the Landlord informs the Tenant, in writing, that the Landlord deems the restoration to be complete and that full rent is due on the first day of the upcoming month. Upon receiving this written notice, the Tenant becomes obligated to pay full rent by the next time rent is due.

If, upon receiving notice that the restoration is complete, the Tenant feels the restoration/repairs are inadequate, the Tenant retains the right to file an Application for Dispute Resolution in which she seeks a rent reduction and/or an Order requiring the Landlord to make repairs.

Section 47 of the *Act* authorizes a landlord to end a tenancy "for cause" for a variety of reasons. The burden of proving the landlord has cause to end a tenancy rests with the landlord.

Section 29 of the *Act* reads:

29(1) 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.

On the basis of the undisputed evidence, I find that on March 12, 2014 the Tenant denied access to contractors who were attempting to repair the rental unit. In the absence of evidence to show that the Tenant gave the Landlord verbal permission to enter the rental unit on March 12, 2014; that the Landlord or an agent for the Landlord had provided written notice of the entry on March 12, 2014 at least 24 hours prior to the intended entry; or that an emergency existed, I find that the Tenant had the right to deny access to the rental unit, pursuant to section 29 of the *Act*.

I find that the Landlord cannot end the tenancy on the basis of the incident on March 12, 2014, as the Tenant was within her rights to deny entry. Although the repairs to the rental unit were undoubtedly delayed as a result of the denied entry, the Landlord could have avoided the delay by providing notice of the entry in accordance with section 29 of the *Act*.

I find that most, if not all, of the problems related to these renovations would have been avoided if the Landlord had not solicited the Tenant's assistance in scheduling the repairs of the rental unit. Had the Landlord coordinated the repair without the assistance of the Tenant and given proper notice of all attempts to enter, it is quite possible that the renovations would have been completed without issue.

On the basis of the undisputed evidence, I accept that the first project manager was replaced because of conflict between the Tenant and the project manager. Given that the Tenant was communicating with the project manager at the request of the Landlord, I cannot conclude that this is grounds to end the tenancy. Had the Landlord wanted to avoid replacing the original project manager, the simple solution would have been to advise the parties that the Tenant is no longer representing the Landlord. The Landlord could have then assumed responsibility for coordinating the repairs and providing the Tenant with proper notice of the need to enter the rental unit.

I find that the Tenant interfered with the renovations when she refused to allow a vanity to be delivered in April of 2014. I find that the dispute over the vanity resulted in none of the materials being delivered on that date, as the contractor opted not to deliver any of the materials if he could not deliver the vanity.

Whether the attempted delivery occurred on April 09, 2014, as the Tenant contends, or April 11, 2014, as the Landlord contends, is irrelevant, as both were business days. As the Tenant agreed, in the document of March 27, 2014, to allow the Landlord access to the rental unit between 8:30 a.m. and 4:00 p.m. from Monday to Friday for a period of until April 25, 2014, I find that the Tenant did not have the right to deny access to the rental unit for the purpose of this delivery.

Although I find that the Tenant's actions in April of 2014 were inappropriate, I agree with the Tenant that this one incident should not be grounds to end a tenancy. I find this to be particularly true in these circumstances, where the Tenant had reason to believe that she had authority to act on behalf of the Landlord in regards to the repairs. I find it entirely possible that the Tenant acted inappropriately during this delivery simply because she believed she was being helpful and/or that she had a right to interfere.

In determining this matter I was heavily influenced by the email that was sent to the Landlord on April 16, 2014, in which the Tenant agreed to have a lock box installed; not to interact with any tradespeople or the project manager; and to not go "into the downstairs". In my view, this provided the Landlord with a clear resolution to the conflict and the Landlord should have made arrangements to resume renovations at this point.

I find that the Agent for the Landlord's statement that renovations were not resumed after April 16, 2014 because they were waiting for the arbitration lacks credibility, as the Landlord did not file an Application for Dispute Resolution until May 02, 2014 and the Tenant did not file an Application for Dispute Resolution until April 22, 2014.

I find that the Agent for the Landlord's statement that renovations were not resumed after April 16, 2014 because they did not have a key is not relevant, as the Landlord refused the key that she acknowledged was offered on April 16, 2014.

Although I find it reasonable for a contractor to refuse to continue to work in the rental unit until they had assurance the Tenant would not interfere with them, I find that the email of April 16, 2014 provides that assurance. I therefore find that the Landlord should have made arrangements to resume repairs after this email was received.

I find that the Agent for the Landlord's loss of "faith" in the Tenant did not prevent her from proceeding with the repairs after April 16, 2014. I find it reasonable that the Agent for the Landlord concluded that she could no longer rely on the Tenant for assistance with the renovations. I find however, that the Landlord should have simply resumed full responsibility for coordinating the repairs at that point, as required by the *Act*.

After considering this matter in its entirety, I find that the Landlord has failed to establish grounds to end this tenancy in accordance with section 47 of the *Act*. I therefore grant the Tenant's application to set aside the One Month Notice to End Tenancy and I dismiss the Landlord's application for an Order of Possession on the basis of that Notice.

As the Landlord has failed to establish the merit of its Application for Dispute Resolution, I dismiss the Landlord's claim to recover the cost of filing the Application.

Conclusion

As the Landlord has failed to establish grounds to end this tenancy, this tenancy will continue until it is ended in accordance with the *Act*.

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: September 04, 2014

Residential Tenancy Branch

