



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The Application for Dispute Resolution failed to properly identify the landlord. With the consent of the parties I ordered that the Application for Dispute Resolution filed by the tenant be amended to properly identify the landlord as it is stated in this decision.

I find that the one month Notice to End Tenancy dated June 11, 2014 was sufficiently served on the Tenant by posting on June 11, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Tenant is entitled to an order cancelling a one month Notice to End Tenancy dated June 11, 2014
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On October 9, 2003 a previous landlord and the tenant entered into a written tenancy agreement that provided that the tenancy would start on November 1, 2003 and continue on a month to month basis. The rent was \$650 per month payable on the first day of each month. The tenant paid a security deposit of \$325 at the start of the tenancy. The present rent is \$860 per month payable in advance on the first day of each month. The tenancy agreement incorporates provisions of the Residential Tenancy Act contains several clauses obligating the tenant to maintain reasonable health, cleanliness and sanitary standards.

The tenant suffers from a disability and needs assistance for regular living. The landlord was concerned about the condition of the rental unit and on January 28, 2014 served a 2 month Notice to End Tenancy on the tenant that set the end of tenancy for January 28, 2014. The tenant filed an application to cancel the Notice to End Tenancy. A hearing was held on March 26, 2014 and the parties reached a settlement. The arbitrator recorded the settlement as follows:

"Settled Agreement

The tenant and the landlord agreed that they could resolve the issues contained in the tenant's application and reach a mutual settlement under the following terms and conditions:

1. The landlord agrees that a suitable, alternative rental unit, or suite as called by the parties, in the same residential building, above the first floor, will be made available to the tenant when the same becomes vacant;
2. The tenant agrees to vacate the rental unit and move into the suitable, alternative rental unit when offered by the landlord so that the landlord will have vacant possession of the rental unit;
3. The landlord agrees that there will be no additional rent increase for the tenant's next rental unit as described above;
4. The parties agree that the tenancy will continue until the landlord offers and the tenant accepts the suitable, alternative rental unit; and

5. The parties acknowledge their understanding that this settled Decision resolves the matters contained in the tenant's application and that no finding is made on the merits of the said application for dispute resolution or the landlord's Notice."

On March 31, 2014 the landlord issued a 2 month Notice to End Tenancy. In a hearing on May 30, 2014 the arbitrator cancelled the 2 month Notice to End Tenancy. The arbitrator in that hearing reminded the landlord of their obligation to comply with the mutually settled agreement of March 26, 2014.

On May 31, 2014 the landlord served a second 2 month Notice to End Tenancy on the Tenant. In a decision dated June 16, 2014 the arbitrator cancelled the Notice and stated"

"As I explained during the hearing held today; I was not prepared, or able, to alter the mutually settled agreement. The matter related to the unit where the tenant will reside in the future has been previously decided, but the landlord has failed to meet the terms of the agreement made. If the landlord wishes to complete renovations, the landlord's compliance with the mutually settlement agreement will negate any need to evict the tenant based on a 2 month Notice ending the tenancy for the purpose of repair of the unit."

The one month Notice to End Tenancy dated June 11, 2014 which is the subject of this hearing relies on the following grounds:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- ...
- (d) the tenant or a person permitted on the residential property by the tenant has
- ...
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;

Briefly, the relevant evidence relied on by the landlord includes the following:

- The landlord produced a number of photocopies of photos showing the poor state of repair of the rental unit.

- The landlord testified there is a hole in the floor and carpet. There are hundreds of spiders and there are pest issues that have not been dealt with.
- A fire inspector who conducted an inspection in December alerted the landlord to problems of cleanliness in the unit. The tenant's social workers were advised but little improvement has been made.
- In January the tenant was offered a comparable suite in the first floor but he refused. Shortly after he was offered a comparable suite on the second floor but again he refused to move.
- There is heavy mould on the carpets because of lack of care. There is a presence of cockroaches and food stuff. The landlord described it like a dumpster.
- The landlord is in the process of renovating all of the rental units in the building. The rental units offered to the tenant in January had not yet been renovated. The landlord takes the position that it cannot offer him a newly renovated rental unit because of his inability to maintain proper sanitary standards.
- The landlord testified they have received complaints by neighbouring tenants. However, the landlord did not provide evidence of those complaints.
- The landlord submitted a serious health issue is not being addressed. He testified he has been told that he should be contacting the Health Inspector.
- The landlord relies on a note from the pest control company. It is difficult to read but includes the following statements:
 - Extremely poor hygiene/sanitation
 - Carpet/flooring is covered with debris of all sorts ...
 - Suite heavily infested with cockroaches, ...mice droppings
 - Suite needs to be cleaned up and reorganized before any pest control solution.

The advocate for the tenant submits the landlord is not acting in good faith and is not living up to his agreement which was recorded in the decision on the arbitrator on March

26, 2014. The tenant testified he is attempting to clean. However, he has refused help for social agencies that might assist with the clean up.

Analysis

This is a difficult case. On one hand the evidence indicates the landlord is not acting in good faith and has not lived up to the settlement agreement set out in the decision of the arbitrator on March 26, 2014. Five days after the decision on March 26, 2014 the landlord issued a two month notice. Several other notices have been issued since then. I do not accept the submission of the landlord that they have lived up to the agreement. The rental units offered to the tenant occurred in January and February of 2014. The landlord has not offered the tenant with any rental unit let alone a "suitable alternative rental unit" since the date of the agreement. The landlord stated they do not have an intention of offering the tenant a renovated unit. The agreement further provides that the tenancy will continue until the landlord offers and the tenant accepts the suitable alternative rental unit.

On the other hand the photographs show there is a significant amount of debris. The landlord has testified his inspections show the rental unit lacks reasonable health, cleanliness and sanitary standards. The photographs are of poor quality but they indicate a problem with clutter. In essence the tenant appears to be taking the position that there is no obligation on the tenant to take proper care of the rental unit given the settlement of March 26, 2014.

I do not accept the that the tenant is free to live in the rental without obligations.

Section 32(2) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 5 provides that the parties cannot contract out of this obligation.

This Act cannot be avoided

5 (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

After carefully considering all of the disputed evidence I determined the landlord has failed to prove the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk. Further the landlord failed to prove the condition of the rental unit is significantly different than what it was on the date of the settlement on March 26, 2014 for the following reasons:

- The quality of the photographs relied on by the landlord is of poor quality. The photographs show significant clutter. However, this existed at the time of the March 26, 2014 hearing and clutter in itself is not grounds to end the tenancy. Further it is insufficient to prove the tenant seriously jeopardized the health or safety of the landlord or put the landlord's property at significant risk.
- The note from pest control technician shows problem with cockroaches, mice feces and cleanliness. It indicates that the unit needs to be treated and the tenant must take steps to facilitate this. The pest control technician did not testify at the hearing and I am unable to conclude that the lack of cleanliness and pest problems has reached a stage required to end the tenancy.

- The landlord failed to prove the loose tiles in the bathroom was anything more than reasonable wear and tear;
- While there are problems with cleanliness, the landlord failed to provide evidence from a health and safety expert in the area who has inspected the rental unit.
- The landlord testified they have received complaints from other residents but failed to provide evidence from those complaining.

In my view the landlord has failed to establish sufficient cause to end the tenancy and is bound by the settlement entered into on March 26, 2014. The decision contemplates the tenant being given a suitable alternative rental unit and that this tenancy would continue until the landlord offers and the tenant accepts the suitable alternative rental unit. It is not appropriate for the landlord to avoid its responsibilities under this agreement and seek to end the tenancy without first at least attempting to fulfill its obligations under the agreement.

This decision should not be considered by the Tenant as a free pass permitting the tenant to continue to live in the rental unit without fulfilling his obligation to maintain reasonable health and cleanliness. At some stage, unless something is done by the tenant, the continued deterioration of the rental unit will reach a stage that it is so significant as to amount to the breach of a material term in the tenancy agreement giving the landlord the right to end the tenancy. The tenant has refused assistance in cleaning. I would strongly encourage him to accept their offer of assistance.

Tenant's Application to Cancel the One month Notice to End Tenancy:

I determined the landlord failed to establish sufficient grounds to end the tenancy. As a result I ordered that the Notice to End Tenancy dated June 11, 2014 shall be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Landlord's Application for an Order for Possession:

I dismissed the landlord's application for an Order for Possession.

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: August 18, 2014

Residential Tenancy Branch

