



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC 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 a notice to end tenancy for cause pursuant to section 47;
- b) To order the landlord to do necessary repairs pursuant to section 32; and
- c) To recover the filing fee for this Application.

Service:

The Notice to End Tenancy is dated August 1, 2014 to be effective September 1, 2014. The effective date on the Notice is automatically corrected to September 30, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution on August 8, 2014 and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord is not repairing and maintaining the unit as required by section 32 of the Act?

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 August 15, 2013, it is a month to month tenancy, rent is \$675 a month and a security deposit of \$350 and pet damage deposit of \$200 were paid in August 2013. The landlord served a Notice to End Tenancy for the following reason:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided a written statement of events. However, it was pointed out early in the hearing by the tenants that all of the alleged events are said to have occurred after the Notice to End Tenancy was issued. The landlord said the first tenants had moved due to similar problems but she had provided no documentary evidence of this. The tenants contended the previous tenants had left because there was a burglary and their front door was not secure.

The witness for the tenant said that there were problems with the electrical service and the breakers should be separated by suites. There was no evidence provided as to lack of repair and insufficient information to determine that the landlord was neglecting her obligation to repair and maintain the premises as set out under section 32 and 33 of the Act.

Included with the evidence is the Notice to End Tenancy, a tenancy agreement without the amount of rent and security deposit shown, two DVDs, logs by upstairs tenants and copies of email messages threatening to turn the power off.

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

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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. While the evidence of the landlord may be credible, I find the evidence cites all instances of disturbance as occurring after the Notice to End Tenancy was issued, that is subsequent to the Notice. I find the Notice invalid; according to section 47, such a Notice is issued for unreasonable disturbance and there is insufficient evidence of any such events before the issuance of the Notice.

In respect to the request for repair, I find insufficient evidence that repair is needed and that written notice has been given to the landlord to do the repairs. Therefore, I decline to issue an Order to Repair.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated August 1, 2014 is hereby set aside and the tenancy

continues. I find the tenants entitled to recover the filing fee for this application by deducting \$50 from their November rent.

I HEREBY ORDER THAT rent for the unit is reduced to \$625 for November 2014 pursuant to sections 65 and 72 of the Act to compensate the tenants for their filing fee.

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: October 02, 2014

Residential Tenancy Branch

