



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenant for orders setting aside a 1 Month Notice to End Tenancy for Cause; awarding her monetary compensation for damage or loss; compelling the landlord to make repairs to the rental unit; allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and reimbursement of the filing fee paid by the tenant for this application. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

- Does the landlord have grounds within the meaning of the *Residential Tenancy Act* for ending this tenancy?
- Is the tenant entitled to a monetary order and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should the tenant be allowed to reduce the rent, past or future, and if so, in what amount and on what terms?

Background and Evidence

This month-to-month tenancy commenced September 1, 2013. There was a written tenancy agreement. The agreement provided that the monthly rent of \$1200.00 was due on the first day of the month. The landlord did not collect a security deposit or a pet damage deposit. The rent does not include electricity or heat.

The tenant paid the full rent on September 2, 2013 and October 1, 2013. In almost every month since then the tenant has paid the rent in two installments each month. There is no defined pattern to the payment dates although one is usually on the first, second or third of the month and the second is usually between the 15th and 23rd day of the month. In some months the cash payment made by the tenant is reduced by a credit given to the tenant by the landlord for work care provided by the tenant to the landlord's horses.

The tenant testified that she and the landlord had an oral agreement dating prior to her moving in that the rent could be paid on the first and fifteenth day of the month. The tenant acknowledged that the written tenancy agreement does say rent is due on or before the first.

The landlord testified that after the start of the tenancy the tenant did approach her about paying the rent in two installments. She agreed to the payment schedule but was of the understanding that the payments would be made so that the full amount was received by the first day of the

month. When the payments were made after the first the landlord notified the tenant at the end of December, 2013, that starting April 1, 2014, the rent had to be paid in full on the first day of the month.

The tenant testified that the landlord did ask for the full rent on the first. She said that she cannot make that payment on the first. Her position is that they always had an agreement that rent would be paid on the first and fifteenth.

On August 5, 2014, the landlord issued and posted a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that the tenant was consistently late paying rent. The tenant filed this application within the time limit for doing so.

The effective date of the notice was September 30, 2014. The tenant paid \$600.00 towards the October rent on October 1, 2014 and another payment of \$600.00 on October 15, 2014. The payments were made by electronic transfer. The tenant receives an e-mail confirmation that the payment has been received. The landlord did not provide the tenant with a receipt or any other written communication that the October payments were being accepted "for use and occupation only".

The rental unit is heated by electric heaters. In the early fall, spring and summer months the monthly electric bills averaged \$70.00 per month. However, the bills for the period December 13, 2013 to April 3, 2014 totalled \$1273.06.

The tenant found it very difficult to make this payment. She also stated that in spite of the high cost the rental unit was still cold.

The tenant argues that if the house were properly finished her bill would be more reasonable. She asks that certain repairs, described in more detail below be made and/or that the hydro account be transferred into the landlord's name.

The rental unit is the main floor of a single family house. The house is over sixty years old. Before this tenant moved in the house did not have a basement. It sat on piles over an unfinished crawl space. The skirting was insulated and there was some vapour barrier on the ceiling but there was no plastic on the ground and there was no heater.

The landlord had the house lifted and a basement dug under it. The basement is now a full eight feet. The lower four to six feet of the basement walls are concrete; the upper portions of the basement walls are frame construction.

The renovations are not complete. Batting insulation has been applied to the walls but the vapour barrier has not been installed. The basement floor has not been poured. All new windows were installed in the basement. An older patio door was installed and the landlord says she filled around the door.

In her request for repairs the tenant focused on those she felt would increase the energy efficiency of the home and reduce the hydro bill. The list of repairs was prepared by her boyfriend, who is in the construction industry but who did not testify or submit any direct evidence. The list included the following:

- No ground seal. (The tenant could not explain what this meant.)
- The basement is not insulated.
- There is no vapour barrier.
- The old floor vents are open to the basement and should be closed off.
- There is no vapour barrier or drywall on the ceiling.
- The pipes from the hot water heater, which is located in the basement, are not insulated.
- There is an open pipe from the kitchen to the outdoors.
- The kitchen window is single pane and froze up in the winter.
- The exterior doors upstairs are not properly sealed.

The landlord's evidence is that:

- A new front door was installed in the fall/winter of 2013. Both fibre and spray insulation was installed around the door but the interior and exterior trim has not been installed.
- The vent holes have been closed off from underneath. The vent covers were left in place upstairs for esthetic reasons.
- The kitchen window is an old single pane window and is not energy efficient.
- The door between the kitchen and the mud room is a solid wood door and is in good condition.
- The pipe in the kitchen is a vent pipe. It should be completed to the roof but may be redirected with the plumbing upgrades anticipated with future construction.

The landlord filed the electric billing data for the previous tenant who had lived in the home for three years before it was raised. The electricity costs for the period October 11, 2012 to April 12, 2013 were \$1228.51 compared to \$1444.25 for the period October 12, 2013 to April 3, 2014.

The tenant argued that the home was colder and the electricity bills higher for him because the house was higher and there was more empty unheated space below it than when it was on a crawl space.

The landlord pointed out that a new meter was activated in the spring of 2014 and that the past winter had been much colder than the previous winter.

When the landlord testified that the basement was quite warm the tenant responded that it is not cold downstairs; it is cold upstairs.

Although the parties gave some evidence about other repairs/issues the tenant was very clear that she was only concerned with those that she thought affected the hydro consumption.

Analysis

The terms of the written tenancy agreement that the tenant would like changed are:

- The requirement to pay the full rent on or before the first day of the month.
- The requirement to pay for the hydro.

The *Residential Tenancy Act* does not give arbitrators the power to change the terms of a tenancy agreement. It only allows arbitrators to find that a term of a tenancy agreement is unenforceable if:

- The term is inconsistent with the Act or the regulations.
- The term is unconscionable.
- The term is not expressed in a manner that clearly communicates the rights and obligations under it.

Neither of the terms the tenant wants changed fit the above criteria so I am not able to unilaterally order a change in the terms of the tenancy agreement. The only question is what did the parties agree?

I do not accept that the parties agreed before the start of this tenancy that the rent would be paid in two installments each month. Not only did the parties sign a written agreement providing that the rent would be paid in full on or before the first day of the month but the tenant actually paid the rent in full on September 2 and October 1, 2013. If the agreement had been otherwise, she would not have done so.

There followed an informal arrangement for a couple of months where the tenant paid the monthly rent in two installments. By making the payments in the manner in which she did the rent was in arrears for most of the month. This is not what the landlord thought she had agreed to.

The tenant's argument that they agreed that the rent would be paid on the first and fifteenth of each month would have been stronger if she had actually complied with the schedule more than once (in April 2014) before the notice to end tenancy was served on her. It is also noteworthy that she paid the June 2014 rent in full on June 2 by a combination of cash in an amount greater than \$600.00 and credit for horse care.

I find that the agreement is that the monthly rent of \$1200.00 is due on or before the first day of the month.

The evidence is clear that the tenant is consistently late paying the rent whether the rent is due on the first or on the first and fifteenth. The landlord did establish cause for ending the tenancy.

However, the landlord accepted a rent payment for the month after the tenancy was to end. The law is that where a landlord does this the tenancy is automatically reinstated unless the landlord specifically tells the tenant that the tenancy is not reinstated and the tenant will have to

vacate the premises at a future date. This should be done in writing. The usual means for doing this is providing a tenant with a receipt for the payment that states it is being accepted “for use and occupation only”.

As the landlord did not specifically notify the tenant in writing that the October 1 and October 15 payments were being accepted for use and occupation only I must find that the tenancy has been reinstated.

The tenancy is being continued only because the landlord made a technical error. However, the tenant is bound by the terms of the written tenancy agreement – the rent is due on or before the first and the tenant is responsible for the hydro bill. If the tenant is late paying the rent at any time the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent. If the tenant is late three or more times within a reasonable period of time the landlord may again serve the tenant with a 1 Month Notice to End Tenancy for Cause based upon her consistent late payment of rent.

With regard to the hydro bills I make the following findings:

- The amounts of the bills are consistent with the bills I have seen for homes of a similar size and age in other hearings.
- The bills incurred by the previous tenant are not that different from the bills incurred by the tenant especially when one considers that in the intervening time hydro rates increased, a new hydro meter was activated, and the last winter was much colder than the previous winter.

The tenant agreed to rent the unit when it was over an unheated crawl space. There is no evidence that the unfinished basement made the rental unit any colder or increased the hydro costs. Accordingly the tenant’s request that the basement be finished is dismissed.

With regard to the exterior door there is conflicting evidence as to whether they are properly sealed or not. The evidence does not tip the balance of probabilities in the tenant’s favour and so this claim must be dismissed.

The evidence is uncontroverted that the kitchen window is not energy efficient. However, this is the window that was in place when the tenant agreed to heat this unit. No order for replacement of the window will be made.

Finally, it appears from the photographs that all that is required to stop the flow of air into the kitchen through the open vent pipe is to plug it up with insulation. Either the landlord or the tenant should be able to do this without a formal order from the Residential Tenancy Branch.

In summary the claim for repairs and for a rent reduction is dismissed.

The tenant never did make her claim for monetary relief particularly clear and her evidence barely touched this subject. Accordingly, the claim for a monetary order is dismissed.

Conclusion

1. The 1 Month Notice to End Tenancy for Cause dated August 5, 2014 was valid but the tenancy is continued for the reason set out in the body of the decision.
2. The terms of the tenancy agreement are that the monthly rent of \$1200.00 is due, in full, on or before the first day of the month and the tenant is responsible for the hydro bill.
3. All other claims by the tenant are dismissed.
4. As the tenant was partially successful on her application she is entitled to reimbursement from the landlord of the \$50.00 she paid to file this application. Pursuant to section 72 that amount may be deducted from the next rent payment due to the landlord.

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 20, 2014

Residential Tenancy Branch

