



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Randall North Real Estate Services
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL, RP, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use; that the landlord be Ordered to make repairs and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on February 4, 2015 be cancelled?

Must the landlord be Ordered to make repairs?

Background and Evidence

The tenant pays \$684.00 rent that is due on the 1st day of each month.

On February 4, 2015 the tenant received a 2 month Notice to end tenancy for landlord's use of the property. Within fifteen days the tenant applied to dispute the Notice.

The Notice gave 1 reason for ending the tenancy:

The landlord has all the necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord confirmed receipt of the hearing package within the required time-frame; no written submission was supplied by the landlord. The landlord believed the tenant had the burden of proving repairs were not required.

The landlord said that they understand there are several areas of mold in the rental unit; one was found behind a mattress the tenant had placed against the wall. Another area of mold is in the ceiling. The landlord plans on completing some exploratory work, to determine what further repairs might be required. The landlord said that vacant possession would allow repair work to be completed, as needed.

The landlord was willing to offer the tenant alternate housing, but at more than double the current rent paid by the tenant, under a new tenancy agreement. The tenant said she cannot afford to pay \$1,350.00 per month.

The tenant is willing to allow the landlord some time to carry out work in the unit and is willing to spend some time away from the home, if necessary.

The tenant has applied for repair, addressing the mold that is present in the home. The landlord has indicated an awareness of this issue.

Analysis

As explained during the hearing, when a tenant applies to cancel a Notice ending tenancy, the landlord provides submissions first, as the landlord must prove the reasons on a Notice issued. This requirement is set out in Residential Tenancy Branch Rules of Procedure, section 11.1:

11.1 Order of presentation

The applicant will present his or her case and evidence first unless the arbitrator decides otherwise, or where a tenant applies to set aside a Notice to End Tenancy, in which case, the respondent landlord will present his or her case first.

The landlord provided testimony related to the need to complete some repairs, but no evidence was supplied in support of repairs and a plan that would require the tenant to vacate the rental unit. Given the lack of evidence that would require vacant possession I cancelled the Notice during the hearing. The parties were informed the tenancy would continue until it was ended in accordance with the legislation.

In relation to the mold, Section 32 of the Act provides, in part:

32 (1) *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.

It is reasonable to expect that a rental unit be free of mold; I do not require evidence of a law to make this finding. While not all mold poses health risk, based on the landlord's acknowledgement that they do plan to address the problem, I find that an Order would not be unreasonable.

Therefore, pursuant to section 32 and 62 of the Act, I Order the landlord to have a reputable person experienced in remediation complete an assessment of the rental unit to establish the source of the mold and to take all recommended steps to remediate any mold that may pose a health risk. I Order the landlord to complete this work no later than May 15, 2015. I have provided this period of time in recognition of the difficulty the landlord may experience in this northern community in obtaining professional trades people in a timely manner and the absence of evidence this mold poses a health risk.

Once the investigation of mold is completed the landlord will provide the tenant with a written report on the findings and the next steps for repair, if there are any required.

The landlord is aware of the tenant's right to quiet enjoyment; the tenant indicated a willingness to try to accommodate the investigation and repairs.

As the tenant's application has merit I find that the tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

Conclusion

The 2 month Notice to end the tenant for landlord's use of the property issued on February 4, 2015 is of no force and effect.

The landlord is Ordered to complete repairs, as set out in my analysis.

This decision is final and binding and 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: March 19, 2015

Residential Tenancy Branch

