



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes cnr, erp, mndc, rp, rr, ff

Introduction

The tenant applies for dispute resolution, seeking an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities), and other orders including for repairs to the premises, and a monetary claim (ostensibly for loss of quiet enjoyment).

Both parties attended the hearing.

Issues to Be Decided

- Should the 10 day Notice to End Tenancy be cancelled?
- Is the tenant entitled to compensation from the landlord?
- Is an order for repairs appropriate?

Background and Evidence

This month-to-month tenancy began April 11, 2014. Monthly rent is \$1,100.00 payable on the 1st day of each month. A security deposit of \$550.00 was paid. No pet damage deposit was paid. No condition inspection report was prepared by the landlord at the start of the tenancy.

The tenant contends that the house required extensive work from the time he agreed to rent it. When he would approach the landlord about problems the landlord either asked him to make repairs himself, or else said the problems would be fixed soon (but never were). Some of the conditions worsened over time. In his evidence, the tenant stated that in March (2015), he was out for two days, and when he returned his master bedroom was covered in mold, including on the ceiling, on his bed and 75% of his clothes. He has not used the bedroom since. A water leak then developed in the living room ceiling. On April 10, 2015, the landlord agreed in writing to make the repairs within 30 days to the living room roof leak, to the sinking floor around the toilet, to the saturated wood below the kitchen sink, to the back door, and to holes around the house leading to the foundation. The landlord then asked the tenant to find someone to provide an estimate for these repairs. Numerous repairers were called by the tenant who would not take on the project. One contractor told him the premises while he resided there, and that the house was hazardous.

In May, 2015, the tenant paid no rent, electing to withhold rent until the repairs were made. On May 17, 2015, the landlord served the tenant with a 10 Day Notice to End Tenancy for failing to pay May's rent. The tenant did not pay any further rent, and remains in possession of the premises. He advises he plans to move out soon.

The landlord testified that at the start of the tenancy, no repairs were needed to the house, but acknowledges that no Condition Inspection Report was prepared. The landlord submits the rent is low. The landlord further submits the tenant has a dog, and never told the landlord about it,

and that the dog is damaging the house. He submits the tenant said he would get his own contractor, but never made any repairs.

Analysis

I first address the issue of the effect of the 10 Day Notice to End tenancy. Section 26(1) of the Residential Tenancy Act requires that tenants must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. I have carefully reviewed the alleged agreement of April 10, 2015, and while the document certainly indicates the landlord will make the repairs within 30 days, there is no indication in the agreement that a failure by the landlord to make the repairs would permit the tenant to withhold his rent. In other words, the tenant was required by virtue of section 26(1) to pay rent on the first day of each month, regardless of whether the landlord made the repairs or failed to make the repairs. It was not a legal option for the tenant simply to withhold or refuse to pay rent. The landlord was therefore entitled to serve the 10 Day Notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. The notice is therefore found effective to end this tenancy, and the tenant's claim to have the notice cancelled is dismissed.

Unquestionably there are significant repairs needed to the premises. As the tenancy ends pursuant to the 10 Day Notice, however, the tenant's claim for repairs becomes moot, and no order is made.

I turn to the tenant's claim for compensation. This claim is in essence a claim that by failing to keep the house in proper and safe repair, the landlord breached the tenant's right to quiet enjoyment of the premises. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with the tenancy for all usual purposes. Every tenancy agreement contains an implied covenant of quiet enjoyment. Interference by way of omission by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment, and could include allowing the landlord property to fall into disrepair so the tenant cannot safely continue to live there.

I am persuaded in this case that the tenant's quiet enjoyment has been interfered with in a significant way. I note that Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. A landlord may not assume that this requirement can simply be downloaded to the tenant, but rather it is the landlord who bears the responsibility to ensure that these standards are met and maintained. The landlord's deficiency of action originated at the start of the tenancy, when he did not conduct a proper condition inspection with the tenant and prepare a Condition Inspection Report, even though these are requirements of every landlord in every tenancy. The following evidence most compelling demonstrates that the landlord permitted the premises to fall into a serious state of disrepair:

1. A ceiling water leak was reported to have occurred in the living room, the landlord was clearly aware of this leak, but never repaired the leak despite agreeing to do so;

2. The presence of uncontrolled moisture or condensation can quickly lead to the formation of mold. Mold can be a serious health concern. In fact, mold developed in the master bedroom, and damaged possessions of the tenant, and as a result the tenant has lost use of the master bedroom since April.
3. The landlord promised in writing on April 10, 2015 to make certain repairs within 30 days (including the living room leak, yet did not do so.

Certainly there are other significant repairs needed to the premises, but it has not been proven by the tenant that these are so serious as to have resulted in a breach of the covenant of quiet enjoyment. I note in this regard that the tenant was aware of many of these deficiencies even before agreeing to rent the premises, yet elected to rent in any event.

In quantifying the tenant's monetary claim, I note that the leak to the living room occurred 3 months ago, and I assess that the loss of value for each of those months at \$150.00, for a total of \$450.00. The master bedroom has been unusable for 4 months, and I assess the loss of the use that room at \$200.00 per month, for a total of \$800.00. I further order that the tenant recover his \$50.00 filing fee from the landlord. The total sum awarded for the landlord's breach of quiet enjoyment, and for the filing fee, is \$1,300.00.

Conclusion

The tenants' claim to cancel the notice ending the tenancy is dismissed. The tenant is awarded \$1,300.00.

I note that no claim has been filed by the landlord, but it is apparent that the tenant owes rent to the landlord. The tenant may opt to apply the awarded sum of \$1,300.00 towards his rental arrears, by notifying the landlord accordingly in writing.

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: July 07, 2015

Residential Tenancy Branch

