



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPB, FF
 CNC, RR, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and for breach of an agreement, and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end the tenancy for cause; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

The hearing did not conclude during the first scheduled hearing date and was adjourned to the following day to continue. The landlord and the tenant both attended on both scheduled dates and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

The tenant advised that he had not received the landlord's evidentiary material, however the landlord advised that it was sent to the address provided by the tenant. The tenant responded that the mailing address is no longer valid but thought mail would be forwarded. I found that the landlord had provided evidence as instructed by the tenant, and the landlord's evidence, as well as the tenant's evidence is considered in this Decision. No further issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the parties advised that the tenant has moved out of the rental unit, and therefore the tenant's application for an order cancelling a notice to end the tenancy, as well as the landlord's applications for an Order of Possession for cause, and the landlord's application for an Order of Possession for breach of an agreement were all dismissed during the first day of the hearing. My Interim Decision is also provided.

Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this month-to-month tenancy began on July 10, 2015 and the tenant moved out on October 1, 2015. Rent in the amount of \$475.00 per month for each of the tenant and a co-tenant are payable on the 1st day of each month and there are no rental arrears. The rental unit is a room in a house with a common kitchen and bathroom as well as other common areas. Only the tenant and one co-tenant resided in the rental unit between July 10, 2015 and October 1 2015. A copy of the tenancy agreement has been provided.

The tenant also testified that the landlord collected a security deposit from the tenant in the amount of \$237.50 which was returned to the tenant by way of paying for junk removal and the tenant had agreed to that, albeit not in writing. The tenant did not provide the landlord with a forwarding address in writing, but left a message on the landlord's answering machine.

The tenant further testified that between July 10 and August 20, 2015, or about 3 weeks after the tenant moved in a move-in condition inspection report was completed, but despite repeated requests, the landlord did not give the tenant a copy.

The tenant testified that the whole house was dirty and overall repairs were required. The co-tenant already lived there before the tenant moved in, and had been there for quite some time. The tenant was promised a clean suite and clean carpets but the home was a "pig-sty," smelling of fresh smoke from the co-tenant. The co-tenant left constant messes and while trying to move his stuff in, there was little cooperation with the tenant from the co-tenant. The co-tenant treated it as his home and told the tenant to leave his home.

A back door to the tenant's storage was pried open and the tenant's items were not safe. Nothing was up to code and nothing was safe. There were ashes from the co-tenant smoking all over, pet smells, and generally dirty.

The tenant complained to the landlord about the co-tenant being physical and uncooperative, and the landlord demanded a copy of a police report because she did not believe the tenant. The tenant provided the landlord with the police file number.

The landlord provided the tenant with a Mutual Agreement to End the tenancy, which the tenant filled out except for the date to move out, and he signed it. The landlord told the tenant that it puts the co-tenant on notice that the rental unit had to be cleaned up. When the tenant signed it, August rent had already been paid, and the tenant wrote on the top of it, "Valid with Both Tenants' Signatures." On August 18, 2015 the tenant received 2 new mutual agreements to end the tenancy which both appeared on the coffee table in the rental unit, a common method of the landlord. The landlord kept circumventing the law by serving another notice to end the tenancy on September 1 and September 10, 2015.

The parties have another hearing scheduled for November 12, 2015 at 9:30 a.m., the subject of which is the tenant's application to cancel a notice to end the tenancy given by the landlord. The landlord sent the tenant a letter saying that the landlord would be willing to return the tenant's security deposit in full as well as another payment of \$237.50 if the tenant moved out by October 1, 2015. Although the tenant didn't sign it, the tenant testified that his actions spoke for him, the tenant moved out by then, and claims one month's rent and the promised \$237.50 from the landlord. The landlord would not accept the tenant's calls, there was no point trying to talk to the landlord, but the tenant's attempts to resolve issues have cost time and money.

The tenant also testified that the parties had attended for a dispute resolution hearing previously, and the tenant requests recovery of the filing fee for the cost of that application in the amount of \$50.00. No filing fee was collected from the tenant for this application.

The landlord testified that the rental home is in very clean condition and was at the beginning of the tenancy, including the carpets. A copy of a professional carpet cleaning receipt in the amount of \$82.95 has been provided which is dated July 4, 2015, prior to the tenant moving in. The tenant chose to leave furniture in the yard, such as a couch which remained in the front of the house. At the beginning of the tenancy it was in good condition, and at the beginning August knife marks appeared. The tenant blamed raccoons, however the photographs appear to show knife stabbings. Another couch was also left outside by the tenant, which caused damage to the lawn, and the landlord gave the tenant a tarp to cover it and other belongings, however it was still an eyesore to the property and the neighbourhood.

The tenant called a maid service for a quote to do additional cleaning, but the landlord never agreed to pay for that. Photographs of the rental unit have been provided and the landlord testified that the co-tenant took them between the end of July and the end of September, 2015 at the landlord's request. The tenant has planted items in the house to make it appear dirty. A photograph has been provided which appears to be a dirty, greasy pipe, which the landlord testified that the tenant brought in from outside and placed it on the carpet, leaving grease and dirt stains on the carpet.

The landlord further testified that the tenant has a very bad drinking problem and drinks up to 24 cans of beer per day, as well as smoking marihuana. The house is only unclean because the tenant doesn't clean up after himself. He leaves dirty dishes in the sink for up to 5 days. The tenant installed a light fixture in the rental unit and dropped it and it broke, but the tenant never cleaned it up, the co-tenant did.

The tenant never spoke to the landlord saying he wanted to address any situation or talk about the condition of the fridge or the rental unit. On July 27, 2015 the parties all went through the house thoroughly and a discussion was held about the condition. The report didn't get signed by the parties due to the lateness of the hour that the inspection was finished. Agreements were that the landlord would have the back entry stair repaired in the fall and a light fixture would be replaced, both of which are done. Also, the co-tenant was going to repair the greenhouse door, but the tenant took the lock and put it in his locked bedroom and the co-tenant was not able to access it. After the tenant moved out, on October 2, 2015 the tenant barged his way into the rental unit unannounced and unwelcomed and broke the back stairs by jumping on it with his portable dishwasher.

The tenant moved out October 1, 2015 leaving the co-tenant to pay the full rent for October and has also left owing a utility bill in the amount of \$223.83. The tenant left on his own choice having not accepted the landlord's offer to mutually agree to move out at the end of September.

The landlord's witness is the co-tenant who testified that he moved into the rental unit about a year ago, and a move-in condition inspection was conducted by the parties 3 months ago with all parties present. The inspection didn't conclude till about 11:00 p.m. and the parties did not sign it.

The witness also testified that he took the photographs provided by the landlord for this hearing and stated that every day when he saw something, he took a photograph. All were taken during the time that the tenant resided in the rental unit with the witness.

The witness denies that the house is unclean, or that it smells of animal urine or feces, and the witness does not smoke in the house.

The witness also testified that the repairs that the landlord agreed to do when the inspection was completed were to repair stairs, replace a light fixture and repair a door to the greenhouse. The witness was going to repair the door to the greenhouse but couldn't access it because the lock was in the tenant's room. The witness asked for it quite a few times, then went to get screws from the hardware store. The tenant finally gave the witness the lock and a week later the tenant moved out.

During course of hearing both parties continually interrupted me, each other and the witness, argued with each other, and were both cautioned several times about interruptions, and the conduct of the proceeding as well as relevance of testimony and cross examination with respect to the application before me.

Analysis

Where a tenant seeks monetary compensation for a reduction in rent, retroactively or otherwise, the onus is on the tenant to establish that the tenancy was devalued as a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement.

In this case, the tenant testified that the rental unit was a "pig sty," including dirty carpets, however the landlord has provided evidence of having professionally cleaned the carpets just prior to the commencement of the tenancy. I have also reviewed the landlord's photographs which the landlord testified were taken at her request and the witness testified were taken during the time that the tenant resided in the rental unit with the co-tenant. All photographs show a clean rental unit, and therefore I cannot accept the tenant's testimony that the landlord failed to provide a clean home.

I also consider the undisputed testimony of the landlord and witness that all repairs promised by the landlord have been completed. Therefore, I cannot find that the tenant is entitled to a reduction in rent for repairs agreed upon but not provided, and there is no evidence that the landlord failed to provide any services or facilities that had been agreed upon.

With respect to the letter wherein the landlord offered to pay the tenant the security deposit and a month's rent if the tenant moved out by September 30 2015, the landlord does not dispute that but testified that the tenant did not respond to it, did not contact

the landlord, did not sign the mutual agreement to end the tenancy, and did not move out by September 30, 2015. I agree.

In the circumstances, I find that the tenant has failed to establish that rent should be reduced for repairs, services or facilities agreed upon but not provided, and the tenant's application is dismissed.

The tenant also seeks to recover a filing fee from a previous hearing and provided a file number during his testimony at this hearing. I have reviewed that file and note that it is treated as abandoned, and I find no reason to order that the tenant recover it from the landlord.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession for cause is hereby dismissed.

The landlord's application for an Order of Possession for breach of an agreement is hereby dismissed.

The tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed.

The tenant's application for monetary compensation by way of a retroactive rent reduction for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

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 30, 2015

Residential Tenancy Branch

