



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC ERP OLC RP RR FF

Introduction

Both parties attended the hearing. The landlord's service address is the same address as the tenant's although the landlord does not reside at the home. There was some evidence regarding service problems due to this issue but both parties agreed the landlord's agent had received the Application and evidence. I find the documents were legally served for the purposes of this hearing. The 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 compensate the tenant with rent reduction or rent rebate for lack of repair and lack of necessary facilities contrary to sections 27, 32 and 33 of the Act;
- c) To order the landlord to comply with the Act and not withhold permission to sublet; and
- d) To recover the filing fee for this Application.

The tenant gave evidence she vacated on December 1, 2015 so she no longer is requesting to cancel the Notice to End Tenancy or to obtain permission to sublet.

Issue(s) to be Decided:

The remaining issue is whether the tenant has proved on the balance of probabilities that the landlord through act or neglect failed to do necessary repairs and provide necessary services? If so, to how much compensation has the tenant proved entitlement?

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 November 1, 2013, rent was \$1450 a month and a security deposit of \$725 was paid. The deposit has not been returned to the tenant and the landlord's agent queried why it should be returned. This matter is complicated by the fact that the landlord does not speak English and has had two agents acting for her. The tenant said she had a text message to say the female agent was no longer acting on November 22,

2015 so she texted the male agent with information. The female agent who was testifying said she and the male agent are in constant communication concerning the property and both know the facts. When I refer to 'the landlord' in this Decision, I refer to the female agent who is currently acting for the landlord and who gave the evidence in this hearing.

The premises are described as a three storey home. This tenant occupied the top floor and another tenant occupied the main floor. No one occupied the basement. The landlord had served two Notices to End Tenancy for cause, the first on October 28, 2015 and the second on December 4, 2015. The tenant said she moved out in response to the first Notice. She said she sent a text to another agent who was reportedly acting for the landlord at that time to tell him she was vacating although she did not think it necessary as she was responding to the Notice to End Tenancy. She did not provide a copy of the message in evidence. The acting agent said she had checked with the other agent and no text was received regarding move-out. She said the other main floor tenant told her she saw some men moving stuff on December 3, 2015 and that a room mate had moved out earlier.

The landlord said they had received no forwarding address in writing from the tenant. The tenant said she had provided this to the landlord with her evidence package on December 23, 2015. She provided no copy of this in evidence (although she provided copies of other evidence given to the landlord) and the landlord denied ever receiving it.

The tenant said the heat had not been working in the two bedrooms since October 2015. She said she gave verbal notice of this but the first written notice was on October 21, 2015. The landlord said she was told that another person had given the tenant a portable heater and everything was okay. The tenant said the portable heater serviced the living room only and no one came from the landlord to look at the problem. She requests a rent rebate or refund for the lack of heat in the bedrooms for two months.

The tenant also gave written notice of a plumbing problem on November 24, 2015. The drains were blocked. When the landlord did not respond, she hired a plumber who came and snaked the pipes on November 27, 2015. She included the invoice she paid for \$427.35. She said she had lived in the unit for 4 years and blockage of pipes was a recurring problem and the previous landlord had come and used Drano and a plunger to successfully clear them. The landlord's agent said this product damages pipes and possibly contributed to the leak that was not fixed by the plumber engaged by the tenant. The agent said that the main floor tenant called them regarding the leaking pipes and said they got worse after the plumber was there on November 27, 2015. The leak seemed to be coming from the upper tenant's area. The landlord sent a plumbing

firm to fix the leaks on November 28, 2015 but this tenant who is the upper tenant refused them entry. An invoice for \$262.50 for their wasted trip is included in evidence. The tenant said two men came to her door when she was sleeping; they said they were from a man whose name she did not recognize. She called the Police for she had no idea who they were; a police file number is in evidence. The landlord said she confirmed with the residential tenancy branch that a leaking pipe was an emergency repair and she could enter without notice. She provided no notice.

Another invoice from the landlord shows a plumbing company attended on November 1, 2015 to fix a receptacle in an upstairs bedroom and to replace a drainage pipe for the washer and unclog a drain.

The tenant said she paid rent in November but not in December 2015.

Included with the evidence is a copy of the Notice to End Tenancy dated December 4, 2015, many text messages, a formal written request for repairs dated October 21, 2015 regarding the heating in the bedrooms, an electrical outlet and a washer problem and another dated November 24, 2015 regarding sink drainage.

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

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Analysis:

There is no longer an issue with the Notice to End Tenancy as the tenant has vacated. Although the tenant said she vacated December 1, 2015, she provided no supportive evidence to her allegation and the landlord said she was still in residence after that date. The landlord provided evidence of email from the main floor tenant stating the tenant was still moving furniture out on December 3, 2015. I find the tenant gave no written notice of her move-out date. Although she said she relied on the fact that she was responding to the first Notice to End Tenancy dated October 28, 2015, she provided no copy of this in evidence. Normally the effective date on such a Notice would be November 30, 2015. I find she filed a Dispute to set it aside on November 2, 2015 so had not accepted it. I find the tenant was still in residence after the effective date of the first Notice to End Tenancy and she was served a second Notice to End Tenancy on December 4, 2015. I find section 26 of the Act provides that rent is due and payable whether or not the landlord is fulfilling their obligations under the Act. I find the weight of the evidence is that the tenant is responsible for rent for December 2015 in the amount of \$1450.

In respect to the tenant's claims for rebate or refund of rent for lack of repair, I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 67 of the Act does not give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the tenant's evidence credible that she was without heat in the two bedrooms for October, November and December until she vacated. I find her evidence is well supported by a text message on October 11 and October 21, 2015 complaining of this problem. Although the acting manager responded by having another temporary manager, "H", supply a portable heater about October 16, 2015, I find the weight of the evidence is that this did not address the lack of heat in the bedrooms and the landlord knew of this by October 28, 2015. I find the landlord was negligent in not repairing the bedroom heating in violation of their responsibilities under section 32 of the Act. I find the tenant entitled to a 10% rebate of rent for 3 months for lack of heat in the bedrooms for a total of \$435.

In respect to the plumbing issues, I find insufficient evidence that the landlord did not respond in a timely manner. I find there were ongoing issues with the plumbing and the landlord had a plumber attend on November 1, 2015 to unclog a drain and fix a washer which the tenant had reported as needing repair on October 21, 2015. I find the tenant then complained of a blocked drain in the bathroom sink on November 24, 2015 and the landlord sent plumbers on November 28, 2015. The tenant only provided 24 hours for the landlord to do the repair before calling a plumber herself on November 25, 2015. Section 32(3) of the Act states the conditions that must be met before a tenant makes emergency repairs themselves. Emergency repairs must be needed, the tenant must have made at least 2 attempts to telephone the person identified by the landlord as the contact person and following those attempts, the tenant has given the landlord reasonable time to make the repairs. I find in this case, the tenant did not give the landlord a reasonable time to make arrangements for a plumber to attend. Therefore, I find her not entitled to deduct the cost of the repair from rent.

Furthermore, I find when the plumbers of the landlord did attend on November 28, 2015 to deal with the leaking pipes from her unit which were impacting the main floor tenant, the tenant refused them entry. I find the leaking pipes was an emergency repair for which the landlord is not required to give Notice of Entry according to section 29(f) as it was necessary to protect the property. I find insufficient evidence to support the landlord's allegation that the plumber engaged by the tenant did not repair properly and actually may have damaged the pipes.

For all of the above reasons, I find the tenant is entitled to a rent rebate of \$435 and to recover her filing fee of \$50. The total of \$485 may be deducted from the rent of \$1450 owed to the landlord for December 2015. I dismiss the rest of her claim.

In respect to the security deposit, I find insufficient evidence that the tenant has provided her forwarding address in writing to the landlord. According to section 38 of the Act, after the tenant provides a forwarding address to the landlord in writing, the landlord has 15 days to either refund all of the security deposit or file an Application to claim against it. If the landlord does not comply, the tenant may be entitled to claim twice her deposit back. I find the tenant's application premature and I give her leave to reapply for the refund of her security deposit after she has provided her forwarding address in writing to the landlord.

Conclusion:

I find the tenant entitled to a rent rebate of \$435 and a filing fee of \$50. I hereby order that \$485 may be deducted from the \$1450 rent she owes to the landlord for December 2015. I give her leave to reapply for the return of her security deposit in compliance with section 38 of the Act after she has served the landlord with her forwarding address 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: January 06, 2016

Residential Tenancy Branch

