



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, MNDC, OLC, PSF, RP, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order for repairs and emergency repairs; to provide services and facilities; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant; his two advocates; and three agents for the landlord.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for repairs; emergency repairs; the provision of services or facilities; or monetary compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for repairs; emergency repairs; the provision of services or facilities; or monetary compensation. I grant the tenant leave to re-apply for his remaining claims.

During the hearing the landlord raised the issue of whether or not the tenant had submitted his Application for Dispute Resolution within the allowable 10 day timeframe. Upon review of the physical and computer files I determined the tenant submitted his Application for Dispute Resolution on November 20, 2015 but due to some administrative complications it was not completely processed until December 4, 2015.

I also note that the 1 Month Notice was dated November 13, 2015. Therefore, I find the tenant submitted his Application for Dispute Resolution within the required 10 Days after receiving the 1 Month Notice to end Tenancy for Cause.

At the outset of the hearing the parties both confirmed that due to a water leak problem in the tenant's rental unit the tenant is now living in a different rental unit until such time as the tenancy ends in accordance with the *Residential Tenancy Act (Act)*. I have amended the tenant's Application to reflect his current rental unit number.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for this Application, pursuant to Section 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

It should also be noted that pursuant to Section 55(1) of the *Act*, if the tenant is unsuccessful in this Application the landlord may be entitled to an order of possession.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on March 11, 2013 for a 1 year and 15 day fixed term tenancy beginning on March 15, 2013 that converted to a month to month tenancy on March 31, 2014 for the monthly rent of \$670.00 due on the 1st of each month with a security deposit of \$335.00. The parties agree the tenant had lived in a different rental unit in the residential property since December 2011; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on November 13, 2015 with an effective vacancy date of December 31, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord submitted that throughout the course of his tenancies at this residential property the tenant has presented as volatile to both the onsite property managers and towards staff at the landlord's business office.

The landlord stated that the because of his size and his propensity for volatile responses the landlord fears for the safety of office staff and in particular the onsite managers when they may have to deal with the tenant in close proximity.

The landlord submits that there have been a number of incident reports submitted by staff in relation to their interactions with this tenant. None of these reports were submitted into evidence. However, all three agents at the hearing provided testimony of their interactions with the tenant.

In particular the landlord submitted that they issued the 1 Month Notice after the tenant responded in a verbally abusive manner (swearing and ordering the landlord's agent out of the rental unit) on the day the landlord offered to have the tenant move to a different

rental unit due to the condition of his rental unit. These events occurred on November 13, 2015.

The parties agree that the residential property has had some water leakage problems for several months. The landlord submits repairs had been completed 10 months prior to the incident of November 13, 2015.

The landlord also provided testimony and a copy of an incident report regarding an incident that occurred on January 12, 2016. This report records one of the onsite manager's interactions with the tenant over use of a washing machine.

The tenant, through his advocate, submitted that because of his mental health condition he can be loud at times and overwhelming in a space. They further submit that it is unlikely he would be threatening, however, based on the events that lead to the interaction on November 13, 2015 it is understandable why the tenant may have had a strong reaction.

The tenant submitted that the ceiling in his rental unit began to leak on October 31, 2015 after the roof being repaired 10 months previously. He went on to state that despite the landlord being aware the landlord was not responding to deal with this issue, such as offering alternate accommodation to the tenant.

The tenant submitted that on November 13, 2015 the onsite manager asked him to move all of his furniture to a new unit (the unit the tenant is currently residing in), without any assistance. He thought the agent's intention was to have the tenant move his belongings to this new unit for storage purposes and not as a place for the tenant to stay until repairs were completed.

Both parties acknowledge this interaction as an altercation.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

In relation to the only incident report submitted into evidence recording the an incident that occurred prior to the issuance of the 1 Month Notice, I find that the landlord has failed to provide sufficient evidence to establish the tenant's reactions to the circumstances of November 13, 2015 interference that was significant or any disturbance was unreasonable.

I find that it is likely that any tenant who had been dealing with a leak in his ceiling for several days and who believes the landlord is not taking him seriously would be understandably upset.

I find the landlord has failed to provide any evidence of any history of interferences that were significant or disturbances that were unreasonable, prior to the issuance of the 1 Month Notice on November 13, 2015. While I accept that staff *may* be uncomfortable dealing with the tenant because of his size and alleged volatility, I find the landlord has provided no evidence that they have made attempts to end the tenancy in the almost five years of this or the tenant's previous tenancy in the same building.

As a result, I find the landlord has failed to establish cause to end the tenancy. Based on this I find the landlord is not entitled to an order of possession.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on November 13, 2015 is cancelled and the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a) of the *Act*.

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: February 1, 2016

Residential Tenancy Branch

