



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPITAL PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, ERP, RP, RR

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent or utilities, to cancel a One Month Notice to End Tenancy for cause; for an Order for the landlord to make emergency repairs for health or safety reasons, for an Order for the landlord to make repairs; and to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the One Month Notice to End Tenancy for cause and cancellation of the 10 Day Notice to End Tenancy for unpaid rent or utilities

is unrelated to the primary issue of disputing the Notices. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application and dismissed the portions of the tenant's application for emergency repairs, repairs and a rent reduction.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on August 15, 2015. Rent for this unit was \$585.00 per month due on the 1st of each month.

With regard to the 10 Day Notice – The landlord testified that the tenant failed to pay the rent due for February, 2016 on the day it was due. A 10 Day Notice for unpaid rent was served upon the tenant on February 02, 2016 by posting the 10 Day Notice to the tenant's door. The 10 Day Notice informed the tenant that he had five days to either pay the outstanding rent of \$585.00 or file an application to dispute the Notice or the tenancy would end on February 12, 2016.

The landlord's agent testified that the tenant did, pay rent in person to the landlord's agent at a store in cash on February 10, 2016. The tenant would not wait for the landlord's agent to count the cash and the landlord's agent gave the tenant a receipt for \$585.00. The tenant quickly left the store. The landlord's agent then counted the cash given and found it was \$60.00 short. The landlord's agent went to the tenant's unit and informed him his rent was short. The landlord's agent testified that the tenant argued that he had paid the rent of \$585.00.

The tenant testified that he had gone with the landlord to pay his rent and did pay \$585.00 on February 10, 2016 and received a receipt showing this was paid. The tenant testified that as all the rent owed was paid within five days the Notice should be set aside.

With regard to the One Month Notice - The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause on January 25, 2016. This Notice has an effective date of February 29, 2016 and provides the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant has allowed an unreasonable number of occupants in the unit*
- 3) *The tenant or a person permitted on the residential property by the tenant has*
 - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
 - (ii) *Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
 - (iii) *Put the landlord's property at significant risk;*

The landlord's agent testified that the tenant has paid his rent late on more than three occasions. Rent for September was paid on September 02, 2015; rent for January was paid on January 02, 2016; rent for February was paid on February 10, 2016 and rent for March was paid on March 02, 2016. The landlord's agent testified that it is his common practice to go to each tenant's unit and collect the rent on the first of each month. If the tenants are not at home the landlord's agent leaves a note on their door asking them to contact him to pay the rent. It is the tenant's responsibility to ensure rent is paid on the day it is due. The tenancy agreement also provides an option for the tenant to pay with postdated cheques, to pay at head office or provide a pre-authorization for payment by a credit card.

The tenant's rent payment for February and March were accepted for use and occupancy only. The landlord has provided documentary evidence to this effect and a copy of the tenancy agreement signed by both parties.

The landlord's agent testified that the tenant has allowed an unreasonable number of occupants in his unit. The tenant is the only tenant on the agreement and while the landlord's agent accepts the tenant's girlfriend is now living with him, there have been many other people coming and going from the unit. The landlord's agent testified that he has received complaints of this from other tenants and has concerns of drug use as he has found needles around the property.

The landlord's agent testified that the tenant has hooked up a washing machine in his unit without the landlord's permission. Washing machines are not permitted in individual units. The tenant was putting the drain pipe in his shower but this caused the shower to block and the landlord sent a plumber to unblock the shower on three occasions. The tenant is now putting his outlet pipe out of his window and the soapy water now runs outside down the walkway. This could potentially cause an accident as the water is slippery. The tenant was asked to remove this pipe but has failed to do so. The landlord's agent referred to a letter of complaint from another tenant provided in documentary evidence.

The landlord's agent testified that the tenant has painted his windows black without permission. The tenant has also blocked up the vents to the mechanical room which adjoins his unit. The tenant has access to the mechanical room through a door in his unit as this unit was previously the manager's unit. By blocking the vents this prevents a flow of air to the mechanical room which could cause damage to the equipment located there.

The landlord's agent testified that the tenant has been involved in altercations with tenants living in two other units. On one occasion the tenant chased the son of one of these other tenants down the street and was also seen chasing another man down the

street. Other tenants are fearful of the tenant and his pit bull dog and the tenants in two other units have given the landlord their notice because of the tenant.

The landlord's agent testified that dogs are not allowed in the units. The tenant brought in a pit bull dog and has not paid a pet deposit. Another person living in the building who helps the landlord out with some maintenance is fearful of this pit bull dog and the tenant's dog has also attacked the plumber sent to his unit.

The landlord seeks an Order of Possession effective as soon as possible.

The tenant disputed the landlord's claims concerning the One Month Notice. The tenant testified that he has always paid his rent either on or before the day it is due. The first time he was late with his rent was when his bank mailed him a new cash card but the mailbox would not lock securely and this card was stolen. A temporary card was given to the tenant but when the tenant went to an ATM to get his rent money on January 01, 2016 he found he could only use this card in the bank. He called his bank and was notified of this. The tenant disputed that he paid rent for September, 2015 late. The tenant agreed he did not pay rent for February until February 10, 2016 and paid rent for March on March 02, 2016.

The tenant disputed that he has a lot of guests coming to his unit. The tenant testified that they have one guest that comes every few months. The tenant disputed that his girlfriend lives with him but testified that she is staying there at present as she is pregnant and on bed rest. She has her own place to live.

The tenant disputed that they use drugs and testified that they are not involved in drugs. Some things are thrown out of the upper windows and there is a lot of traffic coming and going from the building.

The tenant testified that he drains his washer in the shower. The shower was already blocked when they moved into the unit and many objects were removed from the

shower drain. The tenant now uses a mesh over the plug to prevent blockages. The tenant disputed that he drains the washer out of the window. There is a pipe attached to the building that belongs to the landlord that is continually running water down the common areas and pathway.

The tenant disputed that they have blocked up any vents. The tenant testified that the landlord's agent did ask the tenant about foam in the vents and the tenant explained that this foam was there when he moved into the unit.

The tenant testified that he has painted his windows black for privacy as many people looking for the previous tenants come up and knock on his window. The tenant referred to the landlord's documentary evidence in the form of a typed letter from the tenant in unit #5. The tenant testified that he asked that tenant if he had written this letter and he told the tenant he had not typed it or signed it. That tenant's daughter also confirmed it was not her father's signature on the letter. The tenant referred to the letter from the tenants in another unit and testified that he does not know these tenants and does not mix with other tenants as his unit has its own entry way.

The tenant testified that when he moved into the unit the landlord was aware he had a pit bull dog and wanted to meet her. The landlord thought this unit was best for the tenant as it has its own entrance for the dog. The tenant agrees his dog is not the nicest dog but testified that she is not aggressive. The dog was given to a friend and she lived there for four to five months. She has only recently returned to the tenant's unit. The tenant agreed he did get another pit bull puppy while their dog was gone; however, that puppy was stolen from the tenant. The tenant testified that his dog did not attack the plumber but was barking at him. The dog will bark at people coming to the door.

The tenant disputed that he chased anyone down the street. The tenant disputed that he signed the tenancy agreement and testified that the landlord's agent has forged his signature on the agreement and the other tenant's signature on his compliant letter.

The tenant calls his witness AM. The witness testified that that she is in the tenant's unit all day and has the rent available to give the landlord. The landlord's agent does not always come to collect the rent on the first of each month. The landlord's agent has also avoided the tenant when he has tried to contact the landlord's agent to pay the rent.

The witness testified that they do not have a lot of company; people do not come and go from their unit. The witness testified that her dog is friendly but will bark at the door. When they go outside the dog is muzzled because of his breed but the dog has never bitten anyone. The witness testified that the landlord's agent did complain about the washing hanging outside when they first moved in and this was dealt with. The witness testified that the shower drain was blocked when the tenant moved into his unit and although the washer does drain down the shower there is a guard to prevent blockages occurring. The only pipe outside is one attached to the side of the building which runs constantly. The witness testified that she had been told it was drainage for a broken pipe in the building.

The landlord's agent asked the witness if she has rent with her each month; then why does the tenant have to go to the ATM machine to get the rent. The witness responded that the tenant left cash with her for January, February and March rent. The tenant had to go to the bank to get the money and then left it with the witness.

The landlord's agent asked the tenant if he left rent money with his girlfriend each month. The tenant responded not every month. He had to go to the bank in January and six months ago the landlord's agent had to drive him to the bank to get rent.

The landlord's agent argued that the tenant states he called and went to his bank on January 01; however, banks are not open on New Year's Day. The witness testified that she is always in the unit with the rent, yet when the landlord's agent knocks on the door she does not respond. Tenants know they can pay rent in at the office if the landlord does not come to collect it.

The landlord's agent testified that the tenant said it is not his signature on the tenancy agreement yet each piece of documentation provided for this hearing from the tenant has a different signature of the tenants on it.

The tenant asked the landlord's agent if the other tenant signed that letter of complaint. The landlord's agent responded that the letter provided from the other tenant was emailed to the landlord's agent and the landlord's agent then took it back to him to be signed. The tenant asked the landlord's agent if he has any proof of late rent payments prior to the One Month Notice or were any warnings given to the tenant about late rent. The landlord's agent responded no only verbal warnings. The tenant asked the landlord's agent if there were any warnings about the dog. The landlord's agent responded that the tenancy agreement states no dogs without the landlord's written permission and no pit bull dogs are allowed. The tenant asked if there are other animals living in units in the building. The landlord's agent responded yes cats are allowed as long as a pet damage deposit is paid. The tenant asks the landlord's agent if he has any proof concerning people coming to the tenant's unit, or needles being found belonging to the tenant. The landlord's agent responded that he saw someone running down the alley and jumping into a car and other tenants gave information about traffic from the tenant's unit and needles being found around the property.

The tenant's advocate states that the landlord's agent says there is a late payment of rent for February and March; these payments would have been made after the One Month Notice was given in January. The rest of the landlord's evidence is hearsay and the landlord has provided no witnesses at the hearing.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the 10 Day Notice to End Tenancy for unpaid rent; The Notice was served on February 02, 2016 by posting it to the tenant's door. This Notice is therefore deemed served three days later on February 05, 2016. The tenant had five days to pay the rent due and paid rent on February 10, 2016. The

landlord has insufficient evidence to show that this rent was \$60.00 short. Without corroborating evidence to support this then I find the tenant did pay the rent within the five allowable days and therefore the 10 Day Notice is null in void. The tenant's application to cancel the 10 Day Notice is therefore allowed.

With regard to the One Month Notice to End Tenancy for Cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the matter of late payments of rent, The landlord has insufficient evidence to show that at the time the One Month Notice was served upon the tenant on January 25, 2016 that there was three late payments of rent. The Residential Tenancy Policy Guidelines #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. As the landlord has insufficient evidence to show that rent for September was paid late then this reason provided on the Notice has no merit at the time the One Month Notice was issued.

With regard to the other reasons provided by the landlord on the One Month Notice, The landlord has insufficient corroborating evidence to show that the tenant has allowed an unreasonable number of occupants in the rental unit, that the tenant's washing machine is draining out of the window of the unit causing a hazard to other occupants or the landlord, that the landlord has warned the tenant that there are no washers allowed in the unit; that the tenants have caused damage to the unit. By painting over the windows these is insufficient evidence to show what type of paint was used and if it can be washed off without damage. There is insufficient evidence to show that the tenant's dog has attacked anyone or that the landlord's agent was not aware the tenant had a dog when he moved into the unit, or that the tenant has covered over the vents to the mechanical room. There is insufficient evidence to support the landlord's claim that the

tenant has chased other tenants or disturbed other tenants. The landlord has provided two witness letters, one of which the tenant has disputed saying this was not written or signed by that tenant. When witness letters are disputed by the tenant they carry little weight as evidence if the landlord does not ask those parties to attend the hearing to give testimony under oath and submit to cross examination.

Consequently, it is my decision that in the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated February 02, 2016 and the One Month Notice to End Tenancy for Cause dated, January 25, 2016 are cancelled and the tenancy will continue.

The tenant is at liberty to reply for the remainder of his claim not heard today.

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: March 09, 2016

Residential Tenancy Branch

