



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *CNL, ERP, RP, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to cancel a notice to end tenancy for landlord's use of property. The tenant has also applied for an order to have emergency repairs done and for a monetary order for compensation for the loss of quiet enjoyment and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing the landlord stated that he had filed his evidence at the Residential Tenancy Branch Office, just two days prior to the hearing. This evidence was not before me. In addition, the tenant stated that he had not been served with the landlord's evidence and therefore the landlord's evidence was not used in the making of this decision.

Issues to be decided

Is the landlord negligent with regard to the maintenance and repairs of the rental unit? Is the tenant entitled to compensation? Is the tenant entitled to the filing fee?

Background and Evidence

This tenancy started in February 2008. Neither party filed a copy of the tenancy agreement. The monthly rent is \$1,350.00.

The tenant agreed that at the start of the tenancy, he was informed that the basement of the unit was unfinished and was subject to flooding. The landlord testified that the rental unit is located on low lying land and gets flooded when there is a lot of rain.

The tenant testified that the septic system is old and inadequate for the number of occupants of the rental unit. The odour of raw sewage is prevalent in the yard and the tenant fears for the safety of her children. The tenant testified that she was reluctant to complain to the landlord because he responds by asking her to move. The landlord agreed that the system needs updating but stated that he has it cleaned once a year.

On March 30, 2016, the tenant served the landlord with a formal written complaint regarding the septic system and the landlord did not respond. The tenant complained to the health authorities who visited the unit and informed the tenant that they would be issuing a repair order to the landlord.

The landlord testified that the repair to the septic system is currently under way and the tenant confirmed that an engineer had visited the site.

The tenant also stated that the landlord visits the unit without giving proper notice and that the chimney and furnace have never been cleaned or serviced. The landlord could not recall the last time he had the chimney and furnace serviced.

The tenant stated that in 2014 during a wind storm a tree in the yard was uprooted. The tenant informed the landlord immediately. It took the landlord two days to visit the property and by then the tenant had cleared most of the debris, to enable him to use his driveway. The tenant is claiming compensation for the work done.

On May 06, 2016, the landlord served the tenant with a notice to end tenancy for landlord's use of property. The tenant made application to dispute the notice in a timely manner. Neither party filed a copy of the notice to end tenancy. In addition the landlord did not file documents to support the reasons for wanting the tenancy to end. The tenant stated that the notice to end tenancy was in response to the tenant's complaint about the septic system, to the health authorities.

Analysis

In order to support the notice to end tenancy, the landlord must prove the reason for the notice to end tenancy.

Section 49 (3) of the *Residential Tenancy Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

In this case the landlord stated that he served a notice to end tenancy on the tenant as he intended in good faith to occupy the rental unit. However, since I do not have the notice to end tenancy before me, I am unable to determine its validity. Also, since the landlord did not file documents to support his reasons for wanting the tenancy to end, he has not proven his case. Therefore I find that the notice to end tenancy must be set aside and the tenancy will continue.

If the landlord intends to end the tenancy, he must serve another notice and provide proper documentation to support the reasons for the notice to end tenancy. The tenant may dispute the notice in a timely manner. Both parties must provide documentary evidence that they intend to rely on during the hearing, to support their claims.

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law and the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In this case, I find that the landlord did not maintain and service the furnace and the chimney on a regular basis. I accept that the landlord cleans the septic system once a year but based on the tenant's testimony, this is not enough to maintain the system in a sanitary condition. I find that the landlord does not take into consideration the age of these items and does not repair or service them as needed. I order the landlord to repair and service these items within a reasonable time after which the tenant may apply for further compensation, if the landlord has not completed maintenance on these items.

I accept the tenant's testimony that he removed the fallen tree and must be compensated for his time and trouble.

Regarding the landlord's right to enter the rental unit, Section 29 of the *Residential Tenancy Act* states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice.

Based on the above findings I order the landlord as follows:

1. Pursuant to Section 29, I order the landlord to provide at least 24 hours' notice of entry to the tenant in writing, prior to entering the rental unit.
2. Pursuant to Section 32, I order the landlord to carry out regular maintenance of the rental property in general and the furnace, chimney and septic system in particular. All repairs must be completed by August 31, 2016.

Regarding the tenant's claim for compensation:

I accept that the septic system is dated and inadequate for the occupants of the rental unit. I also accept that the tenant had to suffer the discomfort of the odour of raw sewage and be subjected to the safety hazards posed by the septic system and the lack of servicing of the furnace and chimney. I also find that the tenant removed the fallen tree when the landlord did not respond immediately to the situation.

The tenant has applied for \$2,500.00 as compensation. In this case I find that by not maintaining the property in an appropriate manner, a breach of contract occurred resulting in a reduction of the value of the tenancy and therefore I find that the tenant is entitled to some compensation.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on *Residential Tenancy Policy Guideline #16*, and taking into account the time that the landlord took to respond to the tenant's requests for maintenance, the lack of regular maintenance and the tenant's time and trouble to clear away the fallen tree, I find it appropriate to award the tenant a minimal award of \$500.00.

Since the tenant has proven his case, I award him the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$600.00. The tenant may make a one-time deduction of \$600.00 from a future rent.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue. The tenant may make a one-time deduction of \$600.00 from a future rent.

The landlord is ordered to provide adequate notice to enter the rental unit and to carry out regular repairs and maintenance of the rental property in general and of the septic system, furnace and chimney in particular.

If the landlord does not complete repairs and servicing to the septic system, furnace and chimney by August 31, 2016, the tenant may apply for further compensation.

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: June 09, 2016

Residential Tenancy Branch