



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 29, 2016
- b. An order to make emergency repairs
- c. An order to make repairs
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on April 29, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the Landlord by mailing, by registered mail to where the Landlord carries on business on May 6, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy April 29, 2016.
- b. Whether the Tenant is entitled to an order for emergency repairs and/or an order for repairs.
- c. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

On September 12, 2012 the landlord and LI entered into a one year fixed term tenancy agreement that provided that the tenancy would start on September 1, 2012 and end on August 31, 2013 at which time the tenant would have to leave. The rent was \$1500 per month payable in advance on the first day of each month. LI paid a security deposit of \$750 at the start of the tenancy.

In January 2013 LI was forced to return to Alberta to deal with a family emergency. The applicant was introduced to the landlord as the person taking over from LI and the landlord agreed to accept the payment of the rent from him. The applicant testified he has reimbursed LI the cost of the security deposit and it continues to be applied against the rental unit. The applicant read an e-mail he received from a representative of the landlord asking whether he was subletting the rental unit from LI.

The applicant has paid the rent in full from April 2013 to the date of the hearing. The applicant has had 2 roommates living with him. While the roommates have changed over time the landlord was aware the applicant and 2 roommates were living in the rental unit since December 2013. .

In late April 2016 the applicant and the landlord discussed the landlord's proposal of signing a new lease up to a 3 year term with a rent increase of \$250 per month (17%). The tenant refused to agree with the rent increase. Two days later the tenant was served with the one month Notice to End Tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on the following sections of the Residential Tenancy Act:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

At the hearing the landlord stated that he did not take the position that the sub let from LI to the applicant was grounds for termination. However, he takes the position that the presence of the two roommates amounts to a sublet and the applicant has not obtained the written consent of the landlord for this.

Analysis:

Application to cancel the one month Notice to End Tenancy dated April 29, 2016

I determined that initially LI sub-let his fixed term tenancy agreement to the applicant. The landlord was aware of this and agreed to it. After the expiry of the fixed term tenancy agreement the landlord continued to accept rent payments from the applicant. I determined that at that stage the parties entered into a new month to month tenancy agreement between the landlord and the applicant. LI was no longer liable to the landlord.

I do not accept the submission of the landlord that the presence of roommates amounts to a sub-let. Policy Guideline #19 includes the following:

Subletting

A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.

Where an individual agrees to sublet a tenancy for the full period of the tenancy, and does not reserve the last day or some period of time at the end of the sublease, the agreement amounts in law to, and will be treated as, an assignment of the tenancy.

The applicant continues to live in the rental unit. This is not a sub-let or an assignment. The applicant has not conveyed an interest in the rental unit to the roommates.

I determined the landlord has failed to establish that there is an unreasonable number of occupants in the rental unit. The landlord testified it is a 2 bedroom unit. It appears the applicant is using a storage room as a third bedroom. The rental unit is 995 square feet without the patio. There is no evidence of failure to pay the rent on time and/or excessive noise from the tenants.

In summary I determined the landlord failed to establish sufficient grounds to end the tenancy. As a result I ordered that the one month Notice to End Tenancy dated April 29, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Application for an Order for Emergency Repairs and Repairs:

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

With respect to each of the Applicant's claim for repairs I find as follows:

- a. I determined the tenant is entitled to an order to replace the cracked tile glass window in the bathroom.
- b. The tenant testified he has had problems with the windows in the bedrooms and the living room. He testified the mold problems were contributed by the problems with the window. The windows are aluminum-framed window which have a life expectancy of 15 to 20 years. They are presently 27 years old. Further, he has a difficult time heating the rental unit in the winter because of drafts. The landlord disputes this claim. They produced photos taken in September and October 2014 which do not show a mold problem. After considering the disputed evidence I determined the tenant is entitled to an order replacing the aluminum framed windows in living room and bedrooms as I am satisfied they are not sufficient and do not meet the requirements of section 32(1) of the Act.
- c. I determined the Tenant is entitled to an order that the landlord clean the weeds and moss on the bottom surface and side-walls of the exterior walkway.
- d. I determined the lack of a dead-bolt is a security issue that needs to be addressed. I determined the Tenant is entitled to an order that the landlord install a deadbolt in the suite.
- e. I determined the Tenant is entitled to an order that the landlord repair the kitchen counter.
- f. I dismissed the claim that the landlord repair or replace the floor as there is insufficient proof that its present condition does not comply with section 32(1) of the Act.
- g. I dismissed the claim that the landlord paint the rental unit as there is insufficient proof that the present condition does not comply with section 32(1) of the Act.
- h. I determined the Tenant is entitled to an order that the landlord repair the outdoor patio light as this is a safety issue.

- i. I determined the Tenant is entitled to an order that the dryer cycle switch be repaired as this is a safety issue.

In summary I ordered that the landlord do the following:

- a. Replace the glass window in the bathroom.
- b. Replace the living room and bedroom windows.
- c. Clean the exterior walkway.
- d. Install a deadbolt to the front door of the rental unit.
- e. Repair the kitchen counter.
- f. Repair the outdoor patio light
- g. Repair the dryer cycle switch.

I further ordered that the repairs be completed by June 30, 2016.

Conclusion::

In summary I ordered that the one month Notice to End Tenancy be cancelled. I ordered that the landlord complete certain repairs by June 30, 2016. The tenant has been for the most part successful. I ordered that the Landlord pay to the Tenant the sum of \$100 for the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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 07, 2016

Residential Tenancy Branch