



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, AT, RR, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), to cancel 1 Month Notice to End Tenancy for Cause, (the "Notice") issued on May 31, 2016, for money owed or compensation under the Act, to have the landlord make repairs to unit, to authorize a tenant to change the locks and allow a tenant to reduce rent for repairs.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matter

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on July 1, 2016.

Although the Notice does not check a specific box, however, attached to the Notice are 5 reasons for the issuance of the Notice. I am satisfied that the tenant was aware of the reasons for issuing the Notice. Therefore, I find it appropriate to amend the Notice pursuant to section 68 of the Act by checking the box that meets the reasons attached.

That reason is:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Issues to be Decided

Should the Notice be cancelled?

Is the tenant entitled to monetary compensation?

Should the landlord be ordered to make repairs to the unit?

Should the tenant be allowed to change the locks?

Is the tenant allowed to reduce rent for repairs?

Background and Evidence

The tenancy began on February 1, 2016. Rent in the amount of \$1,700.00 was payable on the first of each month. The tenant paid a security deposit of \$850.00.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

The landlord testified that shortly after the tenancy commenced the tenant notified them that there was no heat in the rental unit. The landlord stated that the tenant was informed where the heat controls were, which the unit is heated to by two different zones and a gas fireplace.

The landlord testified that they did not hear any further about the heat until approximately 3 weeks later, when they were informed that the floor in the family room was not heating and the one bedroom attached to the same zone was also not heating.

The landlord testified that they arranged for a technician to attend on March 12, 2016; however, the technician was delayed due to traffic and was a few minutes late and when they attended the rental unit the tenant deny access.

The landlord testified that they have tried to communicate with the tenant; however, they are unreasonable and when they try to arrange a time to fix the heat, they demand it be on specific dates, and an exact time must be given.

The landlord testified that the tenant was also away in March and April 2016, the tenant did not want them accessing the unit while they were away, which they respected.

The landlord testified that the last notice to enter was given by email, which was more than 24 hours notice and when they attended the tenant was acting irrational, slamming the door on them, and refused access because the tenant said they were late. The landlord stated that the time provided was only an estimate as the technician cannot give an exact time, as they do not know how each job before them may take or traffic conditions. The landlord stated the tenant was also informed that they would be a few minutes late.

The landlord testified that the tenant is interfering with their rights to make repairs which were asked for by the tenant and unreasonable denying access and have now asked for compensation. The landlord stated that at the last incident the tenant also called the police. The landlord stated that they cannot continue with the tenancy as continues to be hostile.

The tenant testified that they agree that they did not give the landlord access and slammed the door on them on June 12, 2016. The tenant stated that they were irritable

because the landlord was late and they were busy cooking dinner. Filed in evidence is a CD, which I have reviewed

The tenant testified on March 12, 2016, the technician was again late and they were busy with their school function, so they were not allowed to enter and were told to come back at a more convenient time.

The tenant testified that the landlord has not given them proper notice in writing and they did not consent to the prior dates. The tenants stated that the landlord also did not attend on one scheduled date and the landlord apologized to them when they forgot to notify them that the technician was unable to make it. Filed in evidence are text messages and emails.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with the landlord

In this case, I find the tenant unreasonable. The CD video provided by the tenant shows the tenant was purposely engaging in hostile conduct towards the landlord, which is not reasonable for a person claiming to have no heat. The landlord was simply there to get the work completed that was requested by the tenant and should not have to be treated with such hostile behaviour of the tenant.

I also note, when work is requested by the tenant that it is only reasonable that the tenant would fully co-operate with the landlord, whether proper notice was given or not. Rather than to engage in such poor behaviour as displayed in the video in which the video shows the young children of the tenants were present..

Further, I find the tenant had written notice, in advance. The tenant does not have the right to deny access to the landlord and there is no provision under the Act that the tenant must consent to the date or time given. There is no requirement for the tenant to be present. The landlord is entitled to legally enter, without have the door continually slammed on them.

Furthermore, while email and text messaging is not an approved method of service, clearly this was the method both parties communicated. The tenant received the

messages; they were readable by the tenant which they responded. I find the tenant was duly served with 24 hours notices and denied access to the landlord on March 12, 2016 and June 2, 2016, which significantly interfered with the landlords rights to conduct business and likely caused extra costs due the tenant's behaviour on these occasions.

Furthermore, I find the tenants behaviour to be unreasonable when alleging that they have no heat and then denying access for the repair, whether 24 hour notice was given or not. This was the tenants request for repairs, which I note was also given by email. The tenant denied access to the landlord on several occasions contributing to the delay. I find the tenant's request for compensation unreasonable. Therefore, I dismiss this portion of the claim..

I find the Notice issued on May 31, 2016, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice issued on May 31, 2016.

Since the tenancy legally ended on the effective date of the Notice, which was July 1, 2016, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant.

Conclusion

The tenant's application is dismissed. The landlord is granted an order of possession, pursuant to section 55 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: July 06, 2016

Residential Tenancy Branch