



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNR, LRE, AS, RR, MNDC

Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants for an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for the cost of emergency repairs; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order permitting the tenants to assign or sublet because the landlord's permission has been unreasonably withheld; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and both tenants attended the hearing on the first scheduled date. At the commencement of the hearing the tenants withdrew the applications for an order suspending or setting conditions on the landlord's right to enter the rental unit, and for an order allowing the tenants to assign or sublet because the landlord's permission has been unreasonably withheld.

Also, at the commencement of the hearing the tenants advised that they have not received the evidentiary material of the landlord. The landlord has provided 25 pages of evidence to the Residential Tenancy Branch and testified that he gave the tenancy agreement to the tenants previously, and gave some documents to the tenants by placing them in the tenant's mailbox about a week ago, or September 25, 2016. One was a letter, then a notice from a purchaser, Contract of Purchase and Sale Amendment, Decision and Order from the Residential Tenancy Branch. The tenant called the landlord on October 2, 2016 saying he would pay the rent and said he had received the papers in his mailbox.

The hearing did not conclude on the first scheduled date; the tenants were not audible and the hearing was adjourned for continuation. The parties were ordered to provide

any evidence that either intends to rely on to each other and to the Residential Tenancy Branch by no later than October 12, 2016.

The landlord and both tenants attended the hearing on the second scheduled date, and the landlord also had a witness. The landlord advised that the tenant served an evidence package to the landlord at midnight on October 12, 2016, however the tenants submit that it was delivered prior to 11:30 p.m. No specific time was ordered, and I find that the landlord has received the evidence as directed. The Residential Tenancy Branch received the tenant's additional evidence the morning of October 13, 2016, and the tenants submit that the office was closing and the tenants were having issues with a copier.

The tenants did not provide the additional evidence to the Residential Tenancy Branch as ordered and, given a second opportunity the landlord did not provide the tenants with a full copy of the landlord's evidence. I am not satisfied that the landlord has served it, or what portions of it. Therefore, I decline to consider either evidence package. The evidentiary material that is considered in this Decision is the 49 page package from the tenants received by the Residential Tenancy Branch on September 19, 2016; the 71 page package from the tenants received by the Residential Tenancy Branch on September 28, 2016 and the copy of the 2 Month Notice to End Tenancy for Landlord's Use of Property provided by the tenants with the Tenant's Application for Dispute Resolution.

During the course of the hearing the tenants referred to the amendment to the application which was not before me. I have now received it and find that it was merely a clerical error in not receiving it in time for the hearing. The landlord had received it, and that document is considered as a part of the tenants' application.

The landlord and both tenants and the witness gave affirmed testimony, and the parties were given the opportunity to question each other and the witness.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established a monetary claim as against the landlord for the cost of emergency repairs?

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the devaluation of the tenancy?

Background and Evidence

The landlord testified that this month-to-month tenancy began in 2006 and the tenants still reside in the rental unit. Rent in the amount of \$800.00 per month is currently payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a single family dwelling.

The landlord further testified that at the beginning of the tenancy the rent was \$1,500.00 per month and was reduced to \$1,200.00, and has been \$800.00 per month for about 3 years. The tenants rented the whole house to begin with, and the landlord is not charging for the basement anymore, although the tenants use it. The parties sign a new tenancy agreement every year so the tenants can show it to a government Ministry. A copy of a tenancy agreement has been provided by the tenants which states that the tenancy begins on January 1, 2016 on a month-to-month basis for rent in the amount of \$800.00 per month due on the 31st day of each month.

The landlord personally served one of the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property on July 31, 2016. Both pages of the 2-page form have been provided and it is dated July 31, 2016 and contains an effective date of vacancy of September 30, 2016. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The landlord further testified that there were no conditions with respect to the sale other than increasing deposits. The deal was done on February 21, 2016 and the landlord got the paperwork after that. The completion date was October 18, 2016 and the notice to end the tenancy was effective September 30, 2016 to give the landlord time to get the key. The landlord received one of the deposit cheques on March 31, 2016 for and on June 30, 2016 he received the other one, and there were no other conditions. The original possession date was October 18, 2016, but there was an extension as requested by the purchasers and the possession date is November 24, 2016. He also

testified that the purchasers requested vacant possession effective September 30, 2016.

When asked why the purchase document shows a misspelling of the landlord's name, the landlord testified that he told the realtor who said the lawyer would fix it on legal documents. The purchasers wanted an extension due to financial problems and the possession date was moved to November 24, 2016. On August 3, 2016 the realtor asked the landlord to agree to the date change, the purchasers gave another \$5,000.00 so the landlord agreed.

The landlord's witness is the realtor, and testified that he sold the property. It was a contract written in February, 2016 and was supposed to complete, all terms on the contract were agreed, but the seller had to give an extension for a month and a half and now is completing on the 25th or whatever of November. It is a legal and binding contract with no subjects. The misspelling of the landlord's name was the witness' error. Once the form is filled out it gets forwarded to the witness' office, then to lawyers and money is transferred at that time. When questioned about the signature of the buyer, the witness testified that the buyer is a company.

The witness is a friend of the landlord, and also sold the house to the landlord. No inspection was done, and no work has been done to the house as far as the witness is aware. The landlord paid some money to the City due to fines of \$4,000.00 or \$5,000.00 due to a "grow show." The city personnel checked inside, the gas meter was taken away and there were some problems with the electrical.

The first tenant (JB) testified that there is no evidence that the sale is finalized, and the 2 Month Notice to End Tenancy for Landlord's Use of Property should be cancelled. The tenants' evidentiary material includes a copy of a Contract of Purchase and Sale dated February 21, 2016 for the rental property, which the tenants received from the landlord. It specifies a deposit of \$5,000.00 from the purchaser to the seller, and specifies terms and conditions. Among those terms is a condition that the purchaser will increase the deposit to \$50,000.00 on or before March 31, 2016, and then increase the deposit to \$100,000.00 on or before June 30, 2016. It also states: "Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*." It states that the sale will be completed on October 18, 2016 at the appropriate Land Title Office, and the buyer will have vacant possession at 5 pm on October 18, 2016. It appears to be a legal document and is signed by a buyer, a seller and a witness on February 24, 2016.

The tenants have also provided me with a document that I assume they received from the landlord entitled, "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession," and is dated June 15, 2016 that states that the purchaser intends in good faith to occupy the residential premises, that all subjects have been removed, and the purchaser requests that the seller give the tenant a notice under the *Residential Tenancy Act* ending the tenancy and requiring the tenant to vacate the premises by 1:00 p.m. on September 30, 2016, and is signed by a buyer and a witness.

The tenant also testified that there are numerous problems with the house, and the landlord refused to fix anything, telling the tenant that if they don't like it to get out. The tenant asked the landlord to eradicate bedbugs in the carpet but didn't do so and the tenants had to tear it up. A copy of a receipt has been provided.

Also, in August, 2016 the tenant asked the landlord about a power surge due to a tree hanging on the power line, but the landlord didn't deal with it. The tenant called a friend who is an electrician and paid \$400.00. The landlord has never taken care of anything. The tenant also broke her hand trying to get the plumbing going.

Mold is throughout the rental unit, and all of the tenants' clothes and furniture are full of mold and bugs. It's not safe, the tenants are sick and the landlord refuses to attend to even look.

The tenants have also provided a medical bill in the amount of \$6,228.74 for inpatient hospitalization and 2 cat scans, and the tenant testified that it was due to illness caused by the unhealthy environment that the tenants reside in.

The second tenant (KA) testified that the landlord issued the 2 Month Notice to End Tenancy prematurely because the Contract of Purchase and Sale is not satisfied and there are too many typing errors.

The tenants had shown the landlord photographs of the poor state of the rental home, but the landlord denied it was his house and refused to inspect it for 11 years. The landlord still hasn't given the tenants a copy of the tenancy agreement.

The landlord kept decreasing the rent because he refused to do any maintenance and the basement wasn't habitable. Reducing rent does not suffice. The tenants called the City because too much power was being drawn. The City personnel came through the house, took photographs and wrote up a ticket for a "grow show" and found a light in the garage. The landlord has provided a receipt showing that he paid a fine but the receipt the landlord has provided is for tax arrears, not the fine.

The tenants have told the landlord many times over the years about repairs required. The landlord also served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities right after the first day of this hearing. The tenant showed it to the Residential Tenancy Branch this morning, who said it's not a legal document.

The landlord's evidence also contains a letter saying he reduced rent because of the tenant's financial situation, then said he couldn't afford the mortgage. That's crazy; rents go up in the neighbourhood.

The tenants have provided receipts to support the claim for the cost of emergency repairs. The first is dated June 23, 2016 for mold removal and products for \$200.00. The second is in the amount of \$400.00 for carpet removal dated July 23, 2016. The third is dated August 23, 2016 in the amount of \$400.00 for continuation of work from the previous month. Another receipt for \$400.00 has been provided dated September 10, 2016 for removal of branches off the main power lines from, "...hydro pole to service head connection at house." Also provided is a note to the landlord and the landlord's witness from the tenants dated September 13, 2016 seeking immediate attention to emergencies of bedbug infestation, rats inside the furnace and huge mold issue.

The tenants' evidentiary material also includes photographs that are quite disturbing with mold spores growing, what appears to be rotted linoleum, a dysfunctional bathroom, floors stained where carpet had been clearly showing wet marks on plywood, mold under the bathroom sink and on the walls and floor, and mold growing on the exterior of the house. Other photographs show rotted stairs at the exterior of the home, and others.

The tenants have also provided a note from a neighbour stating that the writer is a doctor and resides next door to the tenants, and that in the spring of 2006 prior to the tenancy, the rental unit was vacant. It also states that the home had been stripped of its copper pipes, causing a big flood into the doctor's back yard. The doctor had to call the City to shut the water off. Another note from a neighbour says that the rental home was previously occupied by squatters.

The tenants seek \$25,000.00 for damages and repairs made by the tenants, and for an order reducing rent for repairs, services or facilities agreed upon but not provided. The tenants have applied for an order that the landlord make emergency repairs for health or safety reasons in a separate application which is scheduled to be heard on November 24, 2016.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. In this case, I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it, or the timing of that, is in dispute.

The *Residential Tenancy Act* allows a landlord to issue such a notice once all conditions for sale of the property have been satisfied and the landlord has been requested in writing by the purchaser to issue the notice because the purchaser intends in good faith to occupy the rental property. A landlord may not issue the notice until after all of that has happened.

In this case, the tenants have provided me with a copy of a Contract of Purchase and Sale dated February 21, 2016 for the rental property specifying a deposit of \$5,000.00 from the purchaser and terms that the purchaser will increase the deposit to \$50,000.00 on or before March 31, 2016, and then increase the deposit to \$100,000.00 on or before June 30, 2016. It also states: "Unless each condition is waived or declared fulfilled by written notice given by the benefiting party to the other party on or before the date specified for each condition, this Contract will be terminated thereupon and the Deposit returnable in accordance with the *Real Estate Services Act*." (underlining added). It appears to be a legal document and is signed by a buyer, a seller and a witness on February 24, 2016. The landlord testified that he received one cheque on March 31, 2016 for \$50,000.00 and on June 30, 2016 received the other \$50,000.00, and that the parties later agreed to a later possession date. However, the "Tenant Occupied Property – Buyers Notice to Seller for Vacant Possession," is dated June 15, 2016 stating that all subjects have been removed. How could the conditions have been fulfilled on June 15, 2016 when the landlord didn't receive the money until June 30, 2016? Further, the landlord's witness testified that the purchaser is a company, who I suspect will not be residing in the rental unit.

There is no evidentiary material and I have heard no testimony with respect to any of the conditions being declared fulfilled by written notice by either the buyer or the seller other than the Buyers Notice to Seller for Vacant Possession. There is no evidence before me that any of the conditions have been satisfied in writing in accordance with the underlined term above. The realtor of all people should know that each condition has to be removed in writing individually. It does not suffice to provide a document signed by a purchaser stating that all subjects have been removed, especially when they haven't been.

I am not satisfied that the landlord has established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, and I cancel it.

With respect to the tenants' claim for the cost of emergency repairs, the *Act* specifies what are defined as emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

The receipts provided by the tenants do not apply to any of the above, with the exception of the \$400.00 bill for removing branches that affect the power lines, and therefore I find that the tenants have established that amount only, and the balance of the tenants' application for a monetary order for the cost of emergency repairs is dismissed.

The tenant testified that the tenants have been asking the landlord for years to deal with the repairs, but the landlord refuses telling the tenants to move out if they don't like it and reducing the rent. I agree with the tenant that reducing rent is not a usual response a landlord has if tenants have financial difficulties. It is well-known that rentals in the community are few and far between, so the landlord would not have any difficulty renting the unit to another tenant, so long as the landlord made the home habitable.

I also consider the photographs and witness statements provided by the tenants, one of whom states that he is a doctor and resides next door to the tenants, and that in the spring of 2006 prior to the tenancy, the rental unit was vacant, had been stripped of its copper pipes, causing a big flood and the doctor had to call the City to shut the water off. Another says that the rental home was previously occupied by squatters.

The landlord's witness testified that he was the selling agent when the landlord bought the home, no home inspection was completed, and the landlord and witness looked at it

and thought it was fine. I don't accept that. The landlord's witness testified that the landlord had to pay some money to the city and the gas meter was taken away and there were some problems with the electricity. It is very clear in the evidence that the landlord simply walked away with the rent money month after month for 11 years without doing anything a landlord is responsible for, leaving the tenants to reside in an infested home. Reducing the rent is not sufficient.

The *Residential Tenancy Act* requires a landlord to provide and maintain rental property in a state of decoration and repair that makes it suitable for occupation, and the landlord's responsibility in that regard applies even if the tenants knew of a breach by the landlord when the tenancy agreement was entered into. I am also satisfied that the tenants reached out to the landlord to encourage attention to the lack of repairs, but the landlord wouldn't attend the rental unit and told the tenants that the photographs they showed him weren't of his house. The tenant testified to that, and the landlord did not dispute it. The note that the tenants gave to the landlord states that there were rats in the furnace, bedbugs and mold, all of which are a landlord's responsibility to deal with, not ignore. I am satisfied that the tenants have suffered damages and have established that the circumstances in this tenancy have been aggravated by the inactions of the landlord, and the tenants are entitled to monetary compensation.

One of the tenants claimed illness as a result of the unhealthy environment, however the only evidence of that I can consider is the hospitalization bill which does not satisfy me that it relates to the rental unit.

With respect to quantum, I consider the fact that the landlord has reduced the rent on more than one occasion. He testified that the rent was \$1,500.00 per month at the beginning of the tenancy and reduced to \$800.00 about 3 years ago. Considering that the tenants had a roof over their head, and any claims must be filed within 2 years, I find that the tenants are entitled to half of the monthly rent that the landlord collected over the last 2 years, or \$9,600.00.

With respect to the tenants' application for a further reduction in rent, it appears to me that reducing rent again will not assist because the amount of work that appears to be necessary in the rental home will take countless months, if not years. The landlord has reduced rent from \$1,500.00 to \$1,200.00 and then to \$800.00 per month. The tenants have an application before the Residential Tenancy Branch for an order that the landlord make emergency repairs for health or safety reasons, and any further reduction in rent should not be considered until a Decision has been rendered on that application. Therefore, I dismiss that portion of the application with leave to reapply.

In summary, the 2 Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues, the tenants will have a monetary order in the amount of \$10,000.00 comprising of \$9,600.00 for aggravated damages and \$400.00 for the cost of emergency repairs. I order that the tenants be permitted to reduce rent for future months until that sum has been realized, or may otherwise recover it.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues.

I further grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$10,000.00, and I order that the tenants be permitted to reduce rent for future months until that amount has been recovered, or may otherwise recover it.

The tenants' application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: October 20, 2016

Residential Tenancy Branch