



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNQ, DRI, OLC, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49;
- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit ("2 Month Notice") pursuant to section 49.1;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62; and
- an order to the landlord to make repairs to the rental unit pursuant to section 32;

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application and evidence package. The landlord testified that he did not provide any documentary evidence to the tenant or Residential Tenancy Branch for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's application and evidence package.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order regarding a rent increase?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on January 1, 2016 on a month-to-month basis. The tenant lives in the basement of a two level house and pays \$380.00 rent in exchange for the use of one bedroom, a shared kitchen and bathroom. The landlord does not live on the premises; instead he rents out each of the six bedrooms for a monthly rate.

The tenant acknowledged personal receipt of the landlord's 2 Month Notice dated February 5, 2017. The grounds to end the tenancy cited in that 2 Month Notice were;

- The landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant
- The landlord has all the necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant

The landlord seeks to end the tenancy because he needs to fix the kitchen, bathroom and floor. Specifically, he testified that he needs to repair the kitchen ceiling, “renew” the bathroom and “fix” the kitchen floor. The landlord indicates that on an undisclosed date he verbally requested the tenant to pay higher rent but the tenant refused. The landlord testified that he set the rent at the start of tenancy and acknowledged that he does not receive a subsidy.

In reply, the tenant testified that because he refused to pay higher rent the landlord issued the 2 Month Notice. While the tenant acknowledged that some work is required in the common areas it is his position that such work does not require vacant possession. The tenant testified that his room does not require any work but contends that the fridge in the shared kitchen could use repair as it continuously leaks water. The tenant has reported the issue to the landlord in the past but despite the landlord's efforts the issue remains.

Analysis

Two Month Notice

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to demolish

the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the tenant's refusal to pay increased rent. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that the landlord truly intends to use the rental unit for the purposes stated on the 2 Month Notice. The landlord testified that the rental unit was required to be vacant for repairs to the kitchen, bathroom and floor. I find the landlord has provided insufficient evidence to establish he truly intends to make these repairs or that such repairs would require vacant possession. I find it more probable the landlord sought to end the tenancy as a result of the tenant's refusal to pay increased rent.

Section 49.1 of the *Act* allows a landlord to end a tenancy if the tenant no longer qualifies for a subsidized rental unit. Because the onus is on the landlord to prove the tenant no longer qualifies for a subsidized rental unit and the landlord acknowledged the unit was not subsidized, I find the landlord has failed to satisfy the burden of proof.

Based on the above, I uphold the tenant's application to cancel the 2 Month Notice.

Rent Increase

Based on the parties testimony and in the absence of a Notice of Rent Increase form, I find the landlord did not comply with section 42(3) of the *Act*, which establishes that a notice of a rent increase must be in the approved form. The tenant at no time paid rent in excess of the amount stipulated by the tenancy agreement. The tenant's application to dispute an additional rent increase is allowed. The rent for this unit remains at \$380.00 per month, as per the written tenancy agreement.

Repair

Pursuant to section 32 of the *Act*, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Based on the tenant's undisputed testimony that the fridge continues to leak, I order the landlord to obtain a certified technician to inspect the fridge no later than March 30, 2017. If the certified technician determines that repairs are necessary, the landlord must have the repairs completed by a certified technician no later than April 13, 2017.

Should the certified technician determine repairs are not necessary, written reasons must be provided by the technician to the landlord who in turn will provide the reasons to the tenant.

Conclusion

The tenants' application to cancel the 2 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application to dispute a rent increase is allowed. The rent for this unit remains at \$380.00 per month, as per the written tenancy agreement.

I order the landlord to obtain a certified technician to inspect the fridge no later than March 30, 2017. If the inspection reveals repairs are required the certified technician must make the necessary repairs no later than April 13, 2017. The landlord must use a certified technician to conduct the inspection and any necessary repairs to the fridge.

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 16, 2017

Residential Tenancy Branch