



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, ERP, LAT, RP

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for landlord use, in order for the landlord to make repairs to the rental unit, an order allowing the tenant to change the locks, in order for recovery of the filing fee, and an order for reduction in the rent for the landlord's failure to comply with the previous order.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issues are:

- Whether or not to uphold or cancel a Notice to End Tenancy that was given for landlord use.
- Whether to order a rent reduction due to the landlord's failure to comply with the previous order.
- Whether to allow the tenant to make repairs to the rental unit and deduct the money from her rent.
- Whether to order repairs to the rental unit.
- Whether to issue an order for the landlord to comply with the tenancy agreement.
- Whether to issue an order allowing the tenant to change the locks.

Background and Evidence

This tenancy began on March 1, 2016 with a monthly rent of \$900.00, due on the first of each month.

Repairs

The applicant had previously applied for a repair order and the arbitrator issued a repair order on January 3, 2017 as follows:

Pursuant to section 32 of the act, I order the landlord to repair the following items:

- the hole in the wall behind the stove and cupboards
- the cracked tile on the bathroom floor
- the kitchen cabinet door
- the leaking kitchen tap
- the shower door

The arbitrator further ordered the landlord to investigate the ventilation fan in the bathroom.

The tenant testified that none of these repairs have been done, and therefore she is requesting an order allowing her to have the repairs done, and deduct the cost from her rent.

The tenant is also requesting a 25% reduction in the rent for the period of time that the repairs have not been done.

In response to the tenant, the landlord testified that he is willing to do all the repairs that have been ordered, however when he took a friend to the tenants rental unit to deal with the repairs, the tenant would not even answer the door, even though she was home, and therefore he fails to see how he can do repairs in the rental unit when the tenant refuses him access.

In response to the landlord's testimony, the tenant testified that the landlord has never given her any notice that he will be bringing someone by to do the repairs, and she further stated that it is the landlord that avoids speaking to her, as he runs away whenever she attempts to speak to him

Smoking

The tenant is also requesting an order that the landlords not smoke in the house, claiming that she was assured, at the beginning of the tenancy, that the landlords did not smoke in the house, that they only smoke on the balcony.

The landlord testified that neither he nor his wife ever smoke in the rental unit as they have young children and they do not believe in smoking around their children. He further stated that they always smoke outside when they need us cigarette.

In response to the landlords testimony, the tenant testified that she has seen the landlord's wife smoking in the house, and blowing smoke out the window, and therefore she knows for a fact that the landlord's wife smokes in the house when he is not home.

New Lock and Reconfigure Window

The tenant has also stated that her rental unit was broken into by someone who gained access through an open window, and reached in and unlocked the door, and therefore she is requesting an order that the landlord install a new lock that is not within reach of the window, and is also requesting that the window be reconfigured so that the opening side of the window is on the other side.

The landlord testified that he is willing to put another lock on the door for the tenant, but again he is unable to do so if the tenant refuses him access.

Notice to End Tenancy

The tenant is also disputing a one-month Notice to End Tenancy, stating that she believes it has been given in bad faith, as the landlord had previously told her he would do anything he could to get her out of the rental unit, and because the landlord has also failed to apply for any permits to do any renovations to the rental property.

The landlord further testified that, the tenant is right; he has not applied for permits to do the renovation to the rental property, however, he really wants this tenant to move out of the rental property as she has been very difficult to deal with.

Analysis

Repairs

It is my decision that I will not issue an order allowing the tenant to do the repairs herself and deduct the money from her rent.

An order has been issued to the landlord to do repairs at the rental unit, and the landlord has testified that he is willing to do those repairs; however since the landlord has never given the tenant proper notice, in advance, that he would be attending the rental unit to do the repairs, I will allow a rent reduction of 25%, from January 2017 until the repairs are completed.

That being said, the landlord must give the tenant advanced **written notice** of the date and times that he intends to enter to do the repairs, and the tenant must cooperate with the landlord, to allow reasonable access to the landlord to complete those repairs.

Smoking

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

In this case it is just the tenants word against that of the landlord as to whether the landlords are smoking in the rental unit, and since the landlord denies smoking in the rental unit, that burden of proof has not been met.

I therefore will not be issuing any order regarding smoking.

New Lock and Reconfigure Window

I am not willing to issue any order for the landlord to install a new lock or reconfigure the window in the rental property, as the break-in at the rental property was not the result of any negligence on the part of the landlords; however at the hearing the landlord did state that he is willing to put a new lock on the door when he's doing the repairs that were ordered.

Notice to End Tenancy

It is my decision however that I will cancel the one month Notice to End Tenancy, as I do not believe the notice has been given in good faith. First of all the landlord has not applied for any permits to do the renovation at the rental property, and secondly the landlord stated the reason he wants the tenant to vacate is that he finds her very difficult.

Filing Fee

It is my decision that since I have found in favor of the tenant on significant portions of this application, I will allow the request for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to section 65 of the Residential Tenancy Act, I have ordered that the tenants rent be reduced by 25% from January 1, 2017 through until the repairs to the rental unit are completed. Rent on this unit is normally \$900.00, and therefore the rent will be reduced to \$675.00 per month. The tenant may deduct any overpayment of rent that is already been paid to the landlord from future rent payable.

Pursuant to section 72 of the Residential Tenancy Act, I have also ordered that the landlord pay the \$100.00 filing fee, and therefore the tenant may also deduct that \$100.00 from future rent payable to the landlord.

Pursuant to section 68 of the Residential Tenancy Act, I have also ordered that the one-month Notice to End Tenancy dated February 22, 2017 is hereby canceled and this tenancy continues.

Pursuant to section 62 of the Residential Tenancy Act the remainder of this application is dismissed without leave to reapply.

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: April 10, 2017

Residential Tenancy Branch