

## **DECISION**

Dispute Codes      CNC, ERP, LRE, OLC, RP, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for emergency and general repairs to the unit site or property, to restrict the Landlord's right of entry, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on May 5, 2017. Further the Tenant said he served the Landlord with the amendment to his application dated May 16, 2017 by personal delivery to the Landlord's adult daughter on May 16, 2017. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Are there emergency repairs to be done?
3. Are there general repairs to be done?
4. Is it justified to restrict the Landlord's right of entry to the rental unit?
5. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on July 4, 2004 as a written tenancy and is now a verbal month to month tenancy. Rent is \$1,762.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$800.00 at the start of the tenancy. The Tenant said a move in condition inspection was completed but he could not remember if a report was completed.

At the start of the hearing it was discovered the Landlord's 1 Month Notice to End Tenancy for Cause was not dated. There was a date for when the 1 Month Notice to End Tenancy for Cause was served to the Tenant, May 5, 2017, but the **actual date** of the Notice was not filed in. Section 52 (a) of the Act says any Notice to End Tenancy **must be signed and dated** or the notice is **not** effective or valid. As the Landlord did not date the 1 Month Notice to End Tenancy for Cause; I find the 1 Month Notice to End Tenancy for Cause is not effective or valid and I order the tenancy to continue as agreed to in the verbal tenancy agreement.

The Tenant continued to say his application has been made as the Landlord has not maintained the property and there are a number of emergency and general repairs needed. The Tenant said there was a furnace/gas leak but it was been repaired in December, 2016. The Tenant said the emergency repairs he is requesting is to repair the leak in the roof, trim the trees over hanging the house as these branches may break and injury someone or the damage the house and for the Landlord to install smoke detectors in the house. The Tenant said he feels the house is unsafe and has been neglected. Further the Tenant said the other repairs that are needed are to repair the ceiling in the master bedroom and the floor in the baby's room which are both a result of the water leak in the roof. As well the Tenant said there is a mould issue in the house which the Tenant and the Tenant's cleaner have tried to clean and bleach but is still present. Finally the Tenant said they have had a rat issue in the crawl space but he has trapped the rats at the present time, but repairs need to be make to the exterior of the house so the rats will not return. The Tenant said he has lived in the rental unit for 13 years and the house has not been painted inside. The Tenant requested the Landlord paint the rental unit.

The Landlord said that he has maintained the house and that the Tenant has signed an agreement dated May 3, 2013 that said the Tenant would do maintenance on the house in lieu of any rent increases. The Landlord continued to say the roof is four years old and he has had it inspected and the Landlord was told the roof does not leak. The Landlord said the trees are overgrow but he believed the Tenant should have trimmed them as part of their maintenance agreement as well as the bushes on the property.

With regard to the Tenant's claims for painting the unit the Landlord said he thought they had an agreement to buy the paint and the Tenant would paint the unit but the Tenant did not do this. The Landlord said the Tenant has done some repairs and renovations but the Landlord thought that was part of the maintenance agreement.

The Landlord said he wants to end the tenancy because the Tenant assaulted him which resulted in the Tenant apologized to him when the Police were called. In addition the Tenant has written abusive and vulgar text messages to the Landlord about the Landlord's wife. The Landlord submitted a copy of a Police officer's card and a copy of the abusive text message.

The Tenant said he has done a some renovations in the rental unit but he does not think it is his responsibility to prune trees and repair the roof or damage caused by the roof

leaking. Further the Tenant said there is an old frig and an old stove in the yard which he has asked the Landlord to remove on a number of occasions. The Tenant said the Landlord has not removed the old appliances.

The parties were offered an opportunity to settle this dispute but a settlement proposal was not achieved, therefore the parties will abide by this decision.

The Tenant said in closing he has lived in the rental unit for 13 years and has always paid the rent and done many up grades to the property. As well he is operating his bee business out of the rental property so it is very difficult for him to find a suitable property to move to. The Tenant said he just wants the Landlord to repair the property and to continue the tenancy in peace and quiet.

The Landlord said in closing the Tenant has paid the rent late on many occasions and he is now very aggressive towards the Landlord when the Landlord come to collect the rent or to do maintenance on the property. The Landlord said he now feels afraid for his safety as the Tenant has assaulted him. The Landlord said he will make another applications to end this tenancy.

### Analysis

Section 52 (a) of the Act says that for a Notice to End Tenancy to be effective the Notice **must be signed and dated**. The 1 Month Notice to End Tenancy for Cause issued by the Landlord on May 5, 2017 is not dated therefore the Notice to End Tenancy is not effective or valid. I dismiss the 1 Month Notice to End Tenancy for Cause served on the Tenant on May 5, 2017 and I order the tenancy to continue as verbally agreed.

Section 32 of the Act says (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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

It is the responsibility of both a landlord and a tenant to maintain a rental unit and the property the unit is on. I find the Landlord is responsible to maintain the structure of the property so it is the Landlord's responsibility to maintain the roof and exterior of the house. I order the Landlord to hire a roofing company that is mutually agreed on by both the Landlord and the Tenant to inspect the roof and repair any deficiencies. As well I order the Landlord to hire a contractor to inspect and repair the exterior of the house to try to prevent any rodents getting into the crawl space.

Further I order the Landlord to hire an arborist or tree company to inspect and prune all the trees on the property that pose a safety threat to the house or people that may be on the property.

In addition I order the Landlord to hire a contractor to inspect and repair the ceiling in the bedroom and the flooring in the babies room.

All landlords are responsible to make every effort to insure a rental unit is safe and meets the fire codes; therefore I order the Landlord to install smoke detectors immediately.

With regard to the painting of the unit, policy guideline #1 says in part a landlord is responsible for painting the interior of the rental unit at reasonable intervals. The tenant cannot be required as a condition of tenancy to paint the premises. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. Consequently as the rental unit has not been painted for 13 years I order the Landlord to paint the interior of the rental unit. If the Tenant and the Landlord want to make an agreement for the Tenant to do some or all the labour for payment or in lieu of rent that can be agreed between the parties.

It is the Landlord's responsibility to maintain rental units even in long term tenancy situations like this tenancy. If the Landlord does not comply with this decision and my Orders by July 31, 2017 the Tenant is at leave to apply for compensation or a rent reduction for the adverse living situation that the Landlord has allowed.

With regard to the Tenants application to restrict the Landlords entry to the rental unit; I order the Landlord to comply with the Act and regulations and provide the Tenant with proper 24 hour Notice of Entry as required by the Act and regulations. The 24 hour Notice of Entry is not required in an emergency situation.

Further I order the Landlord to comply with all aspects of the Residential Tenancy Act and regulations and I recommend the Landlord visit the Residential Tenancy Branch website or to phone an Information Officer (1800 665 8779) for information regarding the rights and responsibilities of landlords and tenants.

In addition I accept the Tenant's testimony that the Landlord owns an old frig and stove that are in the yard and should be disposed off for safety reasons; therefore I order the Landlord to remove the frig and stove by June 30, 2017.

With regards to the Tenant's testimony that there is mould in the rental unit it is very difficult to determine if the mould is caused by the structure or the people living in the unit with out a professional mould testing company assessing the rental unit. Consequently, I order the Tenant to continue to clean and bleach the areas affected and if the mould persists I recommend the Tenant or Landlord get an accredited mould assessment.

As the Tenant has been successful in this matter I order the Tenant to recover the filing fee of \$100.00 by reducing the next rent payment by \$100.00 making the July, 2017 rent payment \$1,662.00.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause is cancelled and the tenancy is ordered to continue as agreed in the verbal tenancy agreement.

The Landlord is ordered to have the rental unit inspected and repaired as stated above by July 31, 2017 or the Tenant is at leave to apply for compensation.

The Landlord is ordered to comply with the Act and regulations.

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 13, 2017.

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Residential Tenancy Branch