



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR CNC OPR OPC RP ERP RR PSF

Introduction:

Both parties and witnesses attended the hearing and gave sworn testimony. A 10 Day Notice to End Tenancy dated September 26, 2017 to be effective October 6, 2017 and a One Month Notice to End Tenancy for Cause dated September 26, 2017 to be effective October 30, 2017 were both served in the mailbox. The tenant said she filed her Application dated September 11, 2017 with an Amendment dated September 27, 2017 on the landlord personally. All parties acknowledged receipt of the documents as stated. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel notices to end tenancy for unpaid rent and for cause pursuant to sections 46 and 47;
- b) To do emergency and necessary repairs pursuant to sections 32 and 33;
- c) To allow the tenant to reduce rent for repairs not done and for facilities not provided;
- d) For a monetary order as reimbursement for repairs; and
- e) To authorize the tenant to change the locks in the rental unit.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief?

Has the tenant proved on the balance of probabilities that the landlord has failed to repair as required pursuant to sections 32 and 33 of the Act? If so, is she entitled to a rent rebate, compensation for repairs and to change the locks in her unit?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced October 1, 2016 on a fixed term six month lease and thereafter from month to month. Rent is \$1400 a month payable on the 25th of each month and a security deposit of \$700 was paid. The landlord served a 10 Day Notice to End Tenancy as rent was unpaid in September 2017. The tenant paid \$1000 on October 11, and \$400 on October 26, 2017. The landlord accepted this rent without limitation by receipt and did not otherwise make it clear that the tenancy was not reinstated.

The landlord also served a One Month Notice to End Tenancy for cause for the following reasons:

- a) The tenant is repeatedly late paying rent.
- b) The tenant has allowed an unreasonable number of occupants in the unit;
- c) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided evidence of the repeated late payment of rent as follows:

June 27: \$1000	June 30: \$400	(rent is due on the 25 th of the month)
July 26: \$1000	July 27: \$400	
August 25: \$1000	Sept. 11: \$400	
October 11: \$1000	Oct. 27: \$400	(for September rent)

The tenant said she was out of town for part of this time and the landlord agreed to her late payments. The landlord denied this. She said she receives money twice in the month and that is why she makes her rent in two payments.

In respect to the repairs requested, the tenant agreed that they had not notified the landlord in writing of the repairs needed until they filed their application. The landlord said the unit was in good condition in October 2016 when he rented it and he had all the plumbing repairs done at that time. The tenant said there were still some leaks and the landlord had just painted over the mould. The tenant asks for \$200 for a dryer they bought and said they also had to buy a washer for \$200. They claimed this was an emergency repair. They delivered the landlord's appliances to his own home after he objected to them leaving them out on the street. The landlord said he would have had the items repaired if notified and plans to have them repaired and put back into the home.

In evidence are the Notices to End Tenancy, the lease and many photographs of items needing repair. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

I find the landlord by accepting rent after serving the 10 Day Notice to end tenancy without limiting it to “use and occupancy only” made it unclear that the tenancy was still ending in accordance with the 10 Day Notice. Therefore, I set aside the 10 Day Notice to End Tenancy.

Section 47 of the Act sets out causes, any one of which, if proven, is sufficient cause to end a tenancy. I find the weight of the evidence is that the tenant has been repeatedly late in paying rent. She was late paying in June, July, August and September 2017 and currently owes rent according to the landlord. I dismiss her Application to set aside the Notice to End Tenancy dated September 26, 2017. Section 55 of the Act provides in this circumstance, an arbitrator must grant the landlord an Order of Possession. As the tenants said they have obtained a new home for December 1, 2017, the Order of Possession is effective December 1, 2017.

In respect to the tenant’s claim for repairs, I find sections 32 and 33 require a landlord to maintain the unit in a state of repair. I find insufficient evidence that the landlord violated the Act as the evidence is that the tenant never notified them in writing of repairs that were needed before filing their Application for Dispute Resolution. Also, as the tenancy is at an end, it is moot to order repairs at this time. I dismiss this portion of the tenants’ application.

Regarding the tenants’ claim for compensation for buying a dryer and washer, I find insufficient evidence that the landlord authorized this purchase. I find section 33 of the Act provides a procedure for a tenant to follow to obtain reimbursement for emergency repairs. I find the tenant did not follow this procedure, did not notify the landlord or give him reasonable time to replace the dryer as required. I find the landlord’s evidence is that he would have preferred to repair the units and the tenant delivered the allegedly broken units to him. Since the tenant paid for another washer and dryer, I find these belong to the tenant and they may remove them when moving. I find the tenant not entitled to compensation for the washer and dryer.

Conclusion:

I dismiss the Application of the tenant to set aside and cancel the One Month Notice to End Tenancy dated September 26, 2017. The tenancy is ended and an Order of Possession to be effective December 1, 2017 is issued to the landlord. I dismiss the rest of the Application of the tenant without leave to reapply for the reasons set out above. Filing fees were waived so are not awarded.

I HEREBY ORDER THAT the tenant may remove their washer and dryer from the premises when they vacate.

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: November 15, 2017

Residential Tenancy Branch