



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, CNR, ERP, OLC, RP, RP, RR, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested the following relief:

- an Order canceling a Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice");
- an Order canceling a 1 Month Notice to End Tenancy for Cause issued October 11, 2017 the ("1 Month Notice");
- an Order that the Landlord:
 - Comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation* and/or the residential tenancy agreement;
 - Make repairs to the rental unit;
 - Make emergency repairs to the rental unit;
- an Order permitting the Tenant to deduct the cost of repairs, services or facilities from the rent; and,
- recovery of the filing fee.

The hearing was conducted by teleconference on December 11, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Naming of the Landlord

The Tenants named the property managers as Landlord in their application. The Landlord named in the residential tenancy agreement was a corporate Landlord. Pursuant to section 64(3)(c) I amend the Tenants' application to correctly name the Landlord.

Preliminary Matter—Issues to be Determined

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The Landlord's representative, K.M., confirmed that the Landlord wished to withdraw the 10 day Notice, as such the Tenant's request to cancel the 10 Day Notice was no longer applicable.

The Tenant confirmed during the hearing that aside from replacing the doors on the kitchen cabinets and repairing or replacing the bathtub, all of the repairs she requested have been completed. She noted that the Landlord only made those repairs after she served her Application materials.

It is my determination that the priority claim before me is the 1 Month Notice to End Tenancy for Cause and the question of the continuation of this tenancy. That issue is not sufficiently related to the Tenant's monetary claim, her claim pursuant to section 65(1) or her request that the Landlord repair or replace the bathtub.

The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy and I therefore exercise my discretion to dismiss the balance of the Tenant's claims (as they remain relevant) with leave to reapply.

Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. Should the Tenant recover the filing fee?

Background and Evidence

Although the Tenant applied for dispute resolution and it is the applicant who generally presents their evidence and submissions first, *Residential Tenancy Branch Rules of Procedure* provide that when a Tenant applies to dispute a notice to end tenancy the Landlord must present their evidence first as the Landlord bears the burden of proving the Notice on a balance of probabilities.

K.M. testified as follows. She stated that the one year fixed term tenancy began December 1, 2016. Monthly rent was payable in the amount of \$1,175.00.

K.M. stated that the Landlord is seeking to end the tenancy based on a 1 Month Notice upon which the following reasons were cited:

<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/> put the landlord's property at significant risk
<input type="checkbox"/> Tenant has engaged in illegal activities that threaten the health, safety or welfare of the building.

K.M. stated that the reasons for issuing the Notice were due to the Tenants verbally harassing the onsite manager, A.P., as well as smoking marijuana in a non-smoking building.

She testified that the Tenants regularly smoke marijuana on their patio and have done so since moving in. She further testified that the tenants above and next to the rental unit complain that the Tenants smoke to the point that it goes into their rental unit and makes other sick. She stated that initially the Landlord did not pursue this as the renter above did not want to put anything in writing as he felt like nothing was going to be done about it.

K.M. stated that the rental building is advertised as a non-smoking building, although this is not provided for in the tenancy agreement. She did not provide any evidence of the advertisements.

K.M. stated that the Tenants were issued a warning letter about smoking marijuana on their balcony; this letter was not in evidence before me.

K.M. stated the Tenants also regularly verbally abuse the onsite manager, A.P., even when she is doing something as simple as retrieving the rent. A.P. did not attend the hearing to testify. K.M. stated that A.P. was not able to attend the hearing as she was having a pre-operative consult for lung cancer removal.

K.M. stated that on October 2, 2017 when A.P. tried to retrieve the rent payment the Tenants informed her that they would not pay rent unless repairs were made to the rental unit. K.M. further stated that A.P. found the Tenants communication to be verbally abusive.

K.M. further stated that on October 8, 2017 the Landlord received a letter from one of the other occupants of the building, C.O. and J.J., who write that they heard the Tenant, J.T. verbally abusing the onsite manager, A.P. In this letter the tenants wrote that they heard J.T. say the following:

- "everyone in the building hates you"

- “you are a fucking bitch”
- you are a “horrible manager”.
- “I am going to cut a hole in the ceiling and make it wet.”

Although he was in attendance at the hearing, the property manager, A.D., did not wish to testify.

In response to the Landlord's claims, J.T. testified on behalf of the Tenants.

In response to the Landlords allegations regarding smoking marijuana, J.T. stated that she smokes marijuana on the balcony, as does the tenant below them. She further stated that when they first moved into the rental building she smelled smoke in the hallway and she spoke with the building manager, L., who confirmed it was a smoking building. She also confirmed that there was nothing in their lease about not smoking.

In response to the Landlord's allegations regarding a verbal altercation on October 2, 2017, the Tenant stated that the allegations were absolutely untrue. She admitted that when she was coming home the on site manager, A.P., asked for the rent cheque. J.T. also admitted that in response she asked A.P. when the Landlord was going to deal with their leaky roof and all the problems in the apartment. She denied that she raised her voice with A.P.

J.T. stated that she speaks to A.P. all the time with no problems. She stated that she spoke to A.P. as recently as the day before the hearing as she helped A.P. put up the Christmas tree in the lobby area and that she helped her.

J.T. stated that the only time they have had any issues with the Landlord is when they have asked for repairs to the rental unit which the Landlord has been resistant to addressing. J.T. stated that in September of 2017 when the roof started to leak really badly again they contacted the manager again. She stated that at first the Landlord did not attend to these repairs as they didn't believe the Tenants. She confirmed that they provided the Landlord with a video of the water coming in after which the Landlord began to address the required repairs. She stated that while she is happy they are finally being addressed, it did take the Landlord a year.

Analysis

After careful consideration of the evidence before me and on a balance of probabilities, I find as follows.

Ending a tenancy is a significant request and the Landlord must prove the reasons cited on the Notice on a balance of probabilities. In the case before me, I find the Landlord has failed to meet this burden.

The Landlord alleges the Tenants smoke in the rental building contrary to their residential tenancy agreement; however, the Landlord also concedes that the tenancy agreement does not contain any prohibition against smoking. The Landlord's representative claims the property is advertised as non-smoking, yet failed to submit any evidence to support this. The Landlord further alleges that the Tenants' smoking bothers other occupants of the rental building.

The Tenants submit that smoking is permitted, that they were informed of this on the day they moved in, that others smoke in the building and that there is no clause dealing with smoking in their tenancy agreement. The Tenants also testified that they smoke infrequently on their balcony.

While it is always difficult to reconcile conflicting testimony and submissions, I reiterate that it is the Landlord who bears the burden of proving the reasons set forth in the Notice. Without documentary evidence to support the Landlord's submissions in this regard, I am unable to find that the rental unit is non-smoking, or that the Tenants' smoking on their balcony unreasonably disturbs others.

The Landlord alleges he Tenants verbally harass the onsite manager. The Tenants vehemently deny this. The onsite manager was not available at the hearing to testify such that the evidence before me from the Landlord was hearsay.

The Tenant, J.T., testified that she and the onsite manager have had disagreements in the past about the Tenants' request for repairs to the unit, but denied that she has verbally harassed or assaulted the onsite manager. She also stated that she speaks to the onsite manager regularly and that they get along. She described an incident the day before the hearing where she helped the onsite manager decorate for the holidays. I found the Tenant's testimony in this regard to be believable and sincere.

It is clear, based on the Tenants' submissions that they have been asking for repairs to the rental unit for some time. I accept the Tenants' testimony that the Landlord only attended to some of these repairs after the Tenants filed their Application for Dispute Resolution, and that some of the requested repairs remain to be done. I also accept that the Tenants were likely frustrated with what they perceived to be the Landlord's refusal to address their concerns. The Tenants were cautioned that they must not withhold rent even if they believe the Landlord is not comply with the *Act*.

As noted previously, I grant the Tenants leave to reapply for monetary compensation related to the repairs, both retroactively and prospectively. I also grant the Tenants leave to reapply for a repair order with respect to the kitchen cabinet doors and the bathtub. It will be up to the Arbitrator on that application to determine whether the Landlord fulfilled their obligations pursuant to section 32 of the *Act*, whether a repair order should be made, or compensation given to the Tenants.

In all the circumstances I find the Landlord has failed to prove the Tenants have *significantly interfered with or unreasonably disturbed another occupant or the Landlord*. I therefore grant the Tenants' request to cancel the 1 Month Notice. The tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.

Conclusion

The Tenants' application to cancel the 1 Month Notice is granted.

As the Tenants have been successful, I award them recovery of the filing fee; pursuant to section 72 of the *Act*, they may reduce their next month's rent by \$100.00 as compensation for this expense.

The balance of the Tenants' claims is dismissed with leave to reapply as remain applicable.

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: December 12, 2017

Residential Tenancy Branch