



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, I determined that evidentiary material provided by the landlord was not provided to the tenant. The landlord first said he forgot to send a copy to the tenant. He then said that no one told him he had to. The Rules of Procedure require any evidence that a party wishes to rely on must be provided to the other party. Since the landlord has not done so, I decline to consider any of the landlord's evidence. All evidence of the tenant has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, or order of the director, Residential Tenancy Branch for repairs to the property?

Background and Evidence

The landlord testified that he purchased the rental property in May, 2017 and the tenant was already a tenant residing in the rental unit and still resides there. Rent in the amount of \$880.00 per month is payable on the 1st day of each month. The landlord did not receive a security deposit or pet damage deposit from the seller and testified that no deposits are currently held in trust. The rental unit is a suite in a duplex and the other suite is also tenanted. There is no written tenancy agreement.

The landlord further testified that the landlord collects rent by attending at the rental unit on the 1st day of each month, and the tenant has been consistently late paying rent. In June, 2017 the tenant paid the landlord \$300.00 cash around the 5th of the month and the balance about 2 weeks later. July's rent was paid on time, but in August the tenant only gave the landlord \$500.00 on the 1st of the month and the balance the next day. In September, the tenant paid \$500.00 on September 1, 2017 and the balance on the third of the month. October's rent was paid on time, but nothing was paid for November and the tenant said she didn't have to pay because of a Residential Tenancy hearing. The tenant has provided receipts for rent and the landlord testified that he signed the receipts, but forgot to check the dates and details.

The landlord went to the rental unit on December 2, 2017 and the tenant paid the landlord \$430.00 and said she couldn't pay the rest because she needed money for food. There are always excuses.

The tenant has so much garbage in the rental unit and on the rental property which makes the property look bad. The landlord went there with a handy man when the rental property was purchased and the rental unit was very filthy and the tenant has been there for 3 years. It will take the landlord a month to repair it and had offered another rental unit owned by the landlord because this place is very bad for her health.

On October 1, 2017 the landlord served the tenant personally with a One Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenant as evidence for this hearing. It is dated October 1, 2017 and contains an effective date of vacancy of November 1, 2017. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The landlord testified that there has been no illegal activity.

The tenant testified that the tenancy began about 5 years ago. Rent is payable in the amount of \$880.00 per month on the first day of each month and there are no rental arrears. The tenant paid the previous owner a security deposit in the amount of \$375.00 at the outset of the tenancy, and no pet damage deposit was collected.

The parties had been to 2 previous dispute resolution hearings, and provided file numbers. The first was between the tenant and the previous owner, and the resulting Decision is

dated April 27, 2017. The landlord was ordered to make some renovations to the rental unit and the tenant was permitted to pay no rent for May while renovations were being completed, but the landlord never completed them, and the tenant was permitted to reduce rent for June by \$100.00 as recovery of the filing fee.

The tenant paid rent for June and has provided a receipt for \$780.00, deducting the filing fee as ordered.

The tenant testified that the only time she was late with rent was in August wherein the tenant paid \$500.00 on August 1, 2017 and \$380.00 on August 2, 2017.

The parties attended the second hearing on October 16, 2017 and the landlord was ordered to pay to the tenant \$880.01, plus a reduction in rent of \$200.00 if repairs had not been completed by October 31, 2017, and another deduction of \$50.00 per month until full repairs are made. The tenant has provided proof of the following payments:

- rent receipt dated June 1, 2017 for \$780.00;
- rent receipt dated July 1, 2017 for \$880.00;
- rent receipt dated August 2, 2017 for \$880.00 with a note that states: "Rent paid 1 day late;"
- rent receipt dated September 1, 2017 for \$880.00;
- rent receipt dated October 1, 2017 for \$880.00;
- Money Order payable to the landlord dated December 1, 2017 in the amount of \$430.00 with a note that states: "Rent minus OHCS Order."

All of the rent receipts contain the landlord's signature. The tenant also testified that the other rental unit offered by the landlord is in worse shape than this rental unit, and all the tenant wants is for the landlord to make the repairs that the tenant has been seeking since April, 2017.

Analysis

I explained to the parties the legal principle of *res judicata* which is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties, after a final judgment was previously issued on the merits of the case. I indicated that I would be reviewing the previous Decisions to ensure that I did not make a finding on a matter that had already been heard and decided upon.

The first hearing was held on April 27, 2017 and the resulting Decision is dated the same day. The application was made by the tenant for

- an order cancelling a notice to end the tenancy for landlord's use of property;

- disputing a rent increase;
- an order that the landlord make emergency repairs for health or safety reasons;
- an order that the landlord make repairs to the unit, site or property;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- a monetary order for return of all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the landlord for the cost of the application.

The Decision shows that the parties settled the dispute: the notice to end the tenancy was cancelled; the landlord agreed to make specific repairs by no later than May 30, 2017 and rent for the month of May was waived; and the tenant would deduct \$100.00 from June's rent as compensation for the filing fee. The specific repairs were:

- three electrical outlets in the living room
- two electrical outlets in the kitchen
- three elements on the stove
- the stove oven
- back door
- rat infestation and rat holes
- bathroom shower leak
- dryer vent

The second hearing was held on October 16, 2017 and the resulting Decision is dated the same date. The application was made by the tenant for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The Decision provides a rent reduction of \$150.00 for the landlord's failure to complete repairs agreed upon; and a retroactive award of \$150.00 per month for 5 months, or

\$750.00 for devaluation of the tenancy due to the landlord's failure to complete the repairs. The Decision also states, in the Analysis section:

"In the event that the landlord does not complete all of the listed repairs ordered by the previous arbitrator by October 31, 2017, I order that the monthly rent for this tenancy for November 2017, is reduced by \$200.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs. **By way of example** and so as to ensure that there is clarity regarding the implementation of my decision, **should the landlord not complete repairs until mid- January 2018**, my order would lead to the following monthly rent payments from November 1, 2017 until February 1, 2018 for this tenancy:"

Month	Monthly Rent
November 2017	\$680.00 (\$880.00 - \$200.00 = \$680.00)
December 2017	\$630.00 (\$880.00 - \$250.00 = \$630.00)
January 2018	\$580.00 (\$880.00 - \$300.00 = \$580.00)
February 2018	\$880.00

The Conclusion section states:

"I issue a monetary order in the tenant's favour in the amount of \$880.01 under the following terms, for retroactive rent reduction and recovery of the filing fee:

Item	Amount
Rent Reduction June, 2017	\$150.00
Rent Reduction July, 2017	\$150.00
Rent Reduction August, 2017	\$150.00
Rent Reduction September, 2017	\$150.00
Rent Reduction October, 2017	\$150.00
Hotplate Cost	\$30.01
Filing Fees	\$100.00
Total Monetary Order	\$880.01

“To implement the monetary award of \$880.01, I order that the tenant may reduce the amount of her next monthly rental payment to the landlord by that amount. In the event that this is not feasible, I issue a monetary Order in the tenant’s favour in the amount of \$880.01.

“The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

“In the event that the landlord does not complete all of the listed repairs agreed to during the previous hearing by October 31, 2017, I order that the monthly rent for this tenancy for November 2017, is reduced by \$200.00. On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant’s rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

“Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month’s reduced rent until such time as the landlord has applied for and obtained an order to modify the reduced rent from an arbitrator appointed under the *Act*. The landlord is at liberty to apply for a determination as to the landlord’s compliance with the previous arbitrator’s decision once the landlord has undertaken the repairs ordered by the previous arbitrator.”

Both Decisions remain outstanding and are in full force and effect based on the evidence before me.

In this case, the tenant has disputed a One Month Notice to End Tenancy for Cause given by the landlord and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause (the Notice) and I find that it is in the approved form and contains information required by the *Act*. A landlord may only issue such a notice if certain

situations occur, which are the reasons contained on page 2 of the Notice. The reasons for issuing it are in dispute, which are:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.

The landlord testified that there has been no illegal activity, so that is not a reason for ending the tenancy, and I am not satisfied that any of the allegations of the landlord that the tenant has kept the rental unit in such filth and disarray. None of the landlord's evidentiary material can be considered, and the tenant denies the landlord's allegations testifying that the photographs provided by the tenant of such disarray are photographs of the neighbour's rental unit.

With respect to repeated late rent, I have reviewed the receipts signed by the landlord, and I do not accept that a property owner would forget to look at details when signing a receipt. I find that the landlord has been very dishonest throughout the hearing.

In the circumstances, I find that the landlord has failed to establish that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act* and I cancel it, and the tenancy continues.

The *Residential Tenancy Act* requires a landlord to provide and maintain rental premises in a state of decoration and repair that makes it suitable for occupation by a tenant. The parties also agreed at the April, 2017 hearing that the landlord would make specific repairs. The tenant has testified that all she really wants is for the landlord to make the repairs. The landlord has been ordered to do so, and I order again that the landlord make the repairs that were ordered in April, being:

- three electrical outlets in the living room
- two electrical outlets in the kitchen
- three elements on the stove
- the stove oven
- back door
- rat infestation and rat holes
- bathroom shower leak
- dryer vent.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the filing fee for the cost of this application. I grant a monetary order in

favour of the tenant in the amount of \$100.00 and I order that the tenant be permitted to reduce rent by that amount for a future month, or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated October 1, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to make the repairs previously ordered and set out above.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent by that amount for a future month, or may otherwise recover it.

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 28, 2017

Residential Tenancy Branch