



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that the landlord handed them the 1 Month Notice on December 2, 2017, I find that they were duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that he received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on December 11, 2017, I find that the landlord was duly served with the tenants' dispute resolution hearing package in accordance with section 89 of the *Act*. Other than the 1 Month Notice and the tenant's application for dispute resolution, no other written evidence was presented by either party with respect to this matter.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for cause based on the 1 Month Notice? Should an order be issued against the landlord to make repairs to the rental unit?

Background and Evidence

Both parties agreed that this month to month tenancy for one of three residential rental units on the second floor of this building began on October 15, 2017. The tenants gave undisputed sworn testimony that there is another residential suite below them and a store on the lower level of this building. Although the landlord testified that he gave the tenants a copy of the written tenancy agreement, the tenants denied that the landlord gave him a copy of this agreement. The parties agreed that monthly rent is set at \$1,000.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$500.00 security deposit paid on or about October 15, 2017.

The tenants entered into written evidence a copy of the 1 Month Notice of December 2, 2017. In that Notice for cause, requiring the tenants to end their tenancy by December 30, 2017, the landlord cited the following reason for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

The landlord testified that he issued the 1 Month Notice because he had received complaints from other tenants in this building about the tenants. He said that the tenants created a lot of noise in this building, which was significantly disturbing other tenants. He said that there are people coming in and out of the tenants' rental unit all the time, and that these comings and goings, particularly at night are interfering with the rights of his other tenants. Although he said that his other tenants have told him that they have photographs to support these allegations, the landlord produced no statements, photographs or witnesses to support his assertions.

For his part, the male tenant (the tenant) denied the claim that the tenants' behaviours have been disturbing others in this building. He said that the tenant who lives immediately below him confirmed to both the tenant and the landlord that he does not hear anything from the tenants. The tenant testified that the tenant below him blames another tenant in the upper floor of this building for the noise in this building.

The tenant testified that the rental unit was in need of repairs when the first inspected the premises prior to their renting this suite. He said that there had been a police raid of this unit, causing damage to the door. He gave undisputed sworn testimony that there were also a number of features of the rental unit, which the landlord said he would compensate the tenant for repairing once the repairs were completed and receipts were provided to the landlord. The tenant said that he purchased second hand paint for

\$100.00 and has not submitted receipts to the landlord because the landlord has thus far refused to compensate him for his work and supplies. The tenant said that there was enough paint to look after the repainting of his suite, which he said has been given a sub-standard repainting and the hallway leading to his rental unit.

In addition to the painting issues noted above, the tenants' application for dispute resolution identified a series of repairs that had not been done by the landlord. These included the provision of a working oven, a broken toilet seat, a missing face plate for an electrical outlet in the bedroom, a missing towel rack, poorly repaired kitchen cabinets and damaged windows. At the hearing, the tenants testified that the landlord provided the tenants with a properly functioning stove with an oven a few days before this hearing. Although the tenants also requested the provision of an exhaust fan above the stove, the tenant confirmed that this was not a feature that the parties had discussed when the tenants first inspected the rental unit, nor had the landlord committed to install an exhaust fan above the stove.

The landlord did not dispute that repairs need to be undertaken at the rental unit. The landlord advised that he had never promised to install an exhaust fan above the stove and that this was a new request, which he was unwilling to undertake. In the event that this tenancy were to continue, the landlord committed to ensure that these repairs, with the exception of the exhaust fan, were completed before February 1. Although there was some discussion to explore whether the repairs would be performed by the tenant, who would be compensated for his work and his supplies, the landlord eventually committed to look after the repairs himself by February 1.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenants filed their application to dispute the 1 Month Notice within the time period required for doing so, the onus transfers to the landlord to demonstrate that there were valid reasons for issuing the 1 Month Notice.

In this case, the sole reason identified in the landlord's 1 Month Notice to end this tenancy for cause relied on paragraph 47(1)(d)(i) of the *Act*, which reads in part as follows:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if...:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,...

Although both parties referred to statements made by other tenants in this building about the tenants' behaviours and actions, neither party produced these other tenants as witnesses, nor did they provide any written statements or photographs from them. Rather, both parties relied solely on their own sworn testimony, which was at least partially influenced by their vested interests in providing testimony that supported their positions. Under these circumstances and as the landlord bears the burden of proof in such matters, I find that the landlord has fallen considerably short of demonstrating that this tenancy should be ended for cause for the reasons identified in the landlord's 1 Month Notice. For these reasons, I allow the tenants' application to cancel the 1 Month Notice. This tenancy continues.

As the landlord agreed to undertake repairs in the event that this tenancy continued, I require the landlord to complete repairs on the following items by February 1, 2018:

- replace broken toilet seat;
- replace broken or missing face plate on electrical outlet in the tenants' bedroom;
- repair kitchen cabinets;
- provide a towel rack in the bathroom; and
- paint the rental unit in an adequate fashion.

In accordance with the powers delegated to me under the *Act*, I also order the landlord to provide the tenants with a copy of the written residential tenancy agreement for this tenancy referred to by the landlord during this hearing.

Conclusion

The tenants' application to dismiss the 1 Month Notice of December 2, 2017 is allowed, with the effect that this tenancy continues until ended in accordance with the *Act*. The 1 Month Notice is of no force or effect.

I order the landlord to complete all of the repairs listed above by February 1, 2018. In the event that the landlord does not complete these repairs by February 1, 2018, I order that the tenants monthly rent be reduced by \$200.00 to \$800.00, until the month after these repairs are completed. In the month following the completion of these repairs, the tenants' monthly rent returns to the amount legally required in accordance with their tenancy agreement (i.e., currently \$1,000.00) and the *Act*.

I also order the landlord to provide the tenants with a copy of the written tenancy agreement for this tenancy, as the tenants maintained that no such copy was provided to them.

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: January 15, 2018

Residential Tenancy Branch