



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, LRE, RR, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel a 10 day Notice to End Tenancy dated December 18, 2017
- b. An order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. An order for the reduction of rent in the sum of \$2452 for repairs, services, or facilities agreed upon but not provided
- d. An order to recover the cost of the filing fee?

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 10 day Notice to End Tenancy was personally served on the Tenant(s) on December 18, 2017. Further I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord resides on December 21, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a 10 day Notice to End Tenancy dated December 15, 2017?
- b. Whether the tenants are entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit.
- c. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?

d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

On June 12, 2014 the parties entered into a written tenancy agreement that provided that the tenancy would start on June 12, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1300 per month payable in advance. The rent was subsequently increased to \$1377.70. The tenant(s) testified they paid a security deposit of \$700 at the start of the tenancy.

The tenant(s) vacated the rental unit on February 1, 2018.

The tenants seek a monetary order based on the following testimony:

- The landlord promised to build a storage shed but failed to do so.
- The landlord promised to build a new bathroom but failed to do so. On two occasions they vacated the rental property to allow the landlord an opportunity to construct the bathroom but when they returned it was discovered the landlord failed to start the work.
- The present bathroom had problems with mould that the landlord failed to deal with.
- There was a rat problem which the landlord failed to deal with. Eventually the tenant blocked the hole where the rats were gaining access.
- There were leaks in the skylight which caused stains on the ceiling. The landlord failed to properly fix these matters.
- The monetary claim of \$2454 is based on receipts they saved from when they went on vacation in order to give the landlord a change to fix the bathroom.
- The landlord has sold the rental property. The tenants submit they are entitled to the equivalent of one month rent.

The landlord gave the following evidence:

- The storage shed was his idea and the tenancy agreement did not oblige the landlord to construct it. He was not able to build it as the Municipality would not permit it because it was on an easement. Instead the landlord built a special gate which allowed the tenant to park a storage trailer on the property.
- The landlord hired a professional exterminator to deal with the rats. The exterminator did not find rats in the attic.

- He intended to re-build the bathroom. However, the tenant reduced the length of time they were on vacation from 6 weeks to 2 weeks and he did not have enough time to complete the work.
- The landlord did not serve a 2 month Notice to End Tenancy on the Tenant. In fact the landlord did not have a legal right to do so because the rental unit had not been sold.

Analysis

It is not necessary to consider the Tenants' application to cancel the 10 day Notice to End Tenancy and the Tenant's application to suspend or set conditions on the landlord's right to enter the rental unit as the tenants have vacated the rental unit and they do not wish the tenancy to be reinstated.

Tenants' Application for a Rent Reduction

I do not accept the submission of the Tenants that they are entitled to the equivalent of one month rent. The landlord did not serve a 2 month Notice to End Tenancy on the Tenants which is a requirement before this claim can be made. Further, the landlords did not have a legal right to serve such a Notice as the requirements of section 49 of the Act had not been made.

I do not accept the submission of the Tenants that they are entitled to compensation for the failure of the landlord to construct a storage shed. The Municipality refused to give permission to construct this storage shed. This was not part of the tenancy agreement. The landlord acted reasonably in improving the access in order for the tenants to bring in a storage trailer.

I do not accept the submission of the Tenants they are entitled to compensation for the failure of the landlord to deal with the rat problem in a timely way. The landlord hired an exterminator. The tenants failed to prove the landlord caused the rat problem or failed to deal with it appropriately.

I determined the tenants are entitled to compensation for the failure of the landlord to make repairs to the bathroom as promised. The tenants relied on the landlord's representations that he would make the repairs. As a result the tenant's enjoyment of the rental property was reduced by having to deal with ongoing mould problems. However I do not accept the submission of the tenants they are entitled to compensation in the sum of \$2454 for this claim. There is not basis for them seeking compensation for the cost of their two vacation.

After carefully considering all of the evidence including the photos and oral testimony of the parties I determined fair compensation is reduced value of the tenancy is the sum of \$250.

Conclusion

I ordered the landlord(s) to pay to the tenant(s) the sum of \$250 plus the sum of \$50 in respect of the filing fee (reduced to reflect the limited success of the Tenants) for a total of \$300.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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: February 06, 2018

Residential Tenancy Branch