



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction:

Both parties attended the hearing and gave sworn or affirmed testimony. The landlord said they served the tenant with a One Month Notice to End the Tenancy for cause dated April 1, 2018 to be effective May 1, 2018 in person on April 1, 2018. I find the effective date on the Notice to End Tenancy is automatically corrected to May 31, 2018 pursuant to section 53 of the Act as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The tenant said she refused to take it and told them to post it on her door. I find she was served on April 1, 2018; the fact that she refused it does not nullify the personal service. The tenant said they served the landlord with their Application for Dispute dated April 5, 2018 by registered mail and the landlord agreed they got it. I find the documents were legally served for the purposes of this hearing. The tenant applies

- a) pursuant to section 47 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy;
- b) To reduce rent for repairs agreed upon but not provided pursuant to section 27 of the Act;
- c) To order the landlord to comply with Notice provisions of section 29 of the Act when entering their suite;
- d) To order the landlord to provide facilities and services required by the tenancy agreement or law and to obtain compensation for facilities not provided.
- e) For compensation for illegal entries into her suite and continual noise from the upstairs family which kept her awake at night.
- f) To recover filing fees for this application.

Issues: Is the tenant entitled to any relief?

Has the tenant proved on the balance of probabilities that they are entitled to the Orders as requested?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. They agreed the tenancy commenced October 31, 2015, rent is \$1000 payable on the first of each month and a security deposit was paid. The landlord served the Notice to End Tenancy because the tenant had changed the locks and not provided them with a key even after written notice to do so. The tenant said she did not as the landlord's family were continually accessing her suite. The tenant described significant problems with the tenancy and said she is moving out by May 31, 2018 and requests an Order that the landlord opens the back gate and provide access for the moving truck on a few different dates. The landlord said they have no issue with that and will make sure the gate is open if given one day's notice.

The tenant described the problems as follows:

1. Disturbance of her reasonable enjoyment: The behaviour of the landlord's family upstairs causes significant disturbance to them and unreasonably interferes with their peaceful enjoyment. She said son S. lives in a separate area and his teenage children continually cause disturbance. She provided evidence of noise complaints made to him and his responses. Some texts were undated but the dated texts show complaints Nov.28, 2017, November 30, 2017, Dec. 13, 2017, and March 3, 2018. The texts contain information that the tenant has to rise in the early hours for work; she cannot get adequate sleep and has had to obtain prescribed medication. The son, S's texts are apologetic and state he will try to do something about it. She asks compensation of \$30,000 for the continual invasion of their privacy and lack of repair.
2. Illegal entry into her suite: The electrical breaker panel for the whole house is located in her kitchen cupboard. The landlord's family continually accesses her suite with no notice to flip the breakers. There is an electrical problem so the breakers flip continually. She finds evidence the landlord or family have been interfering with her belongings, for example, when one came in and turned off the TV and left the remote on her bed. She leaves the TV on for her pets as she is at work all day. The landlord said entering to flip the breakers was an emergency for which the Act allows them to enter without notice. They deny interfering with her belongings and said her pets or room mate likely move things around.
3. Repairs, services and facilities were agreed upon and not provided so she asks for compensation for lack of adequate heat and Wi-Fi in the amount of \$3600. She said a jetted bath was included in the advertisement but the landlord has asked her not to use it. The landlord controls the heat to the home and it is cold

downstairs. The landlord provided some small heaters and pays for hydro but she said they were too small and died. There is no fan on the stove (photo evidence provided) so the smoke alarm cannot be used as it goes off with normal cooking.

4. She had problems accessing the Wi-Fi about 50% of the time which caused problems in getting messages to work. The landlord said they were not notified the Wi-Fi was not working. The tenant said when she complained, the other son said the bill was not paid. The landlord said they had some issues for a few days and then changed providers. The tenant said she received no code. Son S. looked at her computer and a few times the problem was her fault. The tenant referred to text messages sent to son S. as evidence of complaint. She got her own service including 3 TVs and internet but she was at work and did not have the cost of the internet. She requested that I look it up if possible.
5. The windows are painted shut and cannot be opened so there is no secondary exit from the suite. A text in evidence shows son, S., promised to open the windows but the tenant said it never happened. A large refrigerator blocks the entrance but the landlord refuses to supply a smaller one.

After discussing this matter with both parties, they agreed on an Order of Possession effective May 31, 2018 as the tenant is vacating during May to a new place.

Analysis:

The Notice to End a Residential Tenancy is based on cause. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it and the tenant disputed it in time. However, I find it is moot to consider setting it aside as the tenant is vacating. The landlord will receive an Order of Possession effective as agreed on May 31, 2018.

In respect to the tenant's request for compensation, I find section 7 of the Act applies:

S. 7(1): If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

This test must be satisfied:

1. Proof the loss exists
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the tenancy agreement or the Act
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to minimize the damage or loss.

I find as follows:

1. Section 28 of the Act states a tenant is entitled to peaceful enjoyment. I find the weight of the evidence is that there has been a serious breach of the Act by the landlord. I find the tenant's sleep has been continually disturbed and her privacy violated by the landlord or the children by noise, eavesdropping and illegal entry. I find the first written complaints in evidence were in November 2017 and they continued until April 2, 2018. She claimed \$30,000 for disruption of her peaceful enjoyment which would mean a rent rebate for almost the whole time she lived there with a room mate and her pets. I find this unreasonable. For the disturbance of her peaceful enjoyment by the noise, eavesdropping and illegal entry, I find the tenant entitled to 6 months of rent rebate of 25% from the time of proof of notification of the landlord to May 2018 for this significant disturbance, in total \$1500.
2. I find the landlord continually accessed her suite to flip breakers and the electrical panel was in her cupboard. The landlord claims this was an emergency but I find it was caused by inadequate wiring and/or breakers. Section 32 of the Act provides a landlord must maintain the property in a state of repair that complies with the health, safety and housing standards required by law. I find the maintenance of the tenant's suite would not comply with safety and housing standards so I find the landlord violated the Act. I find there were serious electrical issues as evidenced by the frequent need to flip breakers. I find the weight of the evidence is that the windows were painted shut and there was no secondary exit, in violation of the law for secondary suites. I find there was no vent on the stove as evidenced by the photograph in evidence and the exit door is partially blocked by a large refrigerator. As the tenant states, these items present a serious safety issue as they could cause fire (electric deficiency) and the emergency responders or tenants may be prevented from accessing or exiting the home.

In response to the landlord's contention that they did not receive written notice of problems, I find violations of legal safety standards and housing standards do not require written notice. I find they are caused by the landlord's neglect of maintenance and observance of the law in violation of section 32 of the Act. On the other hand, the tenant could have mitigated her damages or loss by applying at any time within her tenancy to have the necessary repairs completed. As she did not mitigate her damages as required by section 7, I find the tenant entitled to limited compensation of 10% of her rent from commencement of the lease until May 2018 for the landlord providing substandard housing in violation of section 32 of the Act. This is 32 months approximately for a total of \$3200.

3. In respect to the Wi-Fi, I find insufficient evidence of how long the problems lasted and whether the tenant had informed the landlord and I find the onus of proof is on her to provide the time the loss existed and its cost. She said she found it was sometimes her fault and it was intermittent. Although she said she got her own service, she did not provide a bill and was unable to state the price of the internet as she was at work. She asked if I would look at some home bills and estimate her cost. I find internet costs vary from \$16 a month to \$68 a month, depending on the package bought from the supplier. I find insufficient evidence to award her compensation for lack of Wi-Fi intermittently.
4. In respect to inadequate heat, I find insufficient evidence to support this. I find the landlord supplied electric heaters and paid for the hydro and they also heated the home. I find the tenant not entitled to compensation for this.
5. As agreed by both parties in the hearing, I grant the landlord an Order for Possession effective May 31, 2018 which will be enforced if the tenant does not vacate as she said. I find the landlord agreed to grant the tenant access through the gate on 24 hours notice so she can have her goods removed during the month of May. An order will be made to this effect and also that the overwide refrigerator be removed to allow free exit from her suite.

Conclusion:

Pursuant to the parties' agreement, I grant the landlord an Order of Possession effective May 31, 2018.

I find the tenant entitled to compensation of \$4700 for the reasons stated above. She is granted a monetary order for this amount. I find her entitled to recover her filing fee of \$100 for a total monetary order of \$4,800.

I HEREBY ORDER the landlord to provide access through the gate to the tenant's moving truck on 24 hours notice during the month of May 2018.

I HEREBY ORDER the landlord to move the refrigerator that blocks sufficient access to the entrance to the tenant's suite so she may have her belongings moved without impediment.

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: May 15, 2018

Residential Tenancy Branch