



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC RR MNRT FFT

Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant(s) 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 pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, and to make submissions. The landlord acknowledged receipt of the tenant's Application for Dispute Resolution and the tenant acknowledged receipt of the landlord's One Month Notice. Both parties confirmed receipt of documentary evidence from the other party.

Preliminary Issue: Additional Evidence Required by Arbitrator

At the conclusion of the hearing, I requested further evidence from the landlord. I determined that I required the evidence ("the police reports") referred to by the landlord to ensure that both parties were given a full and meaningful opportunity to address the issues between them. The evidence would help to determine whether the landlord's Notice to End Tenancy was justified. The provision of the reports would also help to ensure that the tenant was not unduly prejudiced by the repeated reference to police reports without the ability to view those reports.

Both parties agreed that it would be useful in making my final determination, to receive a copy of the police reports. The landlord relied heavily on the necessity of a police presence at the rental unit, and the tenant argued that the landlord exaggerated the nature of the incidents. Given the discrepancies between the two party's description of the materials, and under my authority at the Residential Tenancy Dispute Resolution Rules of Procedure Rule No. 3.19, I ordered that:

- the landlord provide the police reports to the tenant and the Residential Tenancy Branch office by June 19, 2018; and
- that the tenant submits a maximum three page response to the reports including whether he wished to respond orally at a reconvened hearing.

On June 18, 2018, the landlord submitted redacted police reports. As of the date of this decision, the tenant has provided no written submission in response.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled, or is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order equivalent to a backdated monthly rent reduction for repairs, services agreed upon but not provided (a stovetop)?

Is the tenant entitled to recover his \$100.00 filing fee from the landlord?

Background and Evidence

This tenancy began on November 1, 2016 as a month-to-month tenancy. As of the date of this hearing, the tenant continues to reside in the rental unit paying a monthly rental amount of \$1500.00. The landlord holds a \$750.00 security deposit paid by the tenant at the outset of the tenancy. The tenant applied to cancel the One Month Notice issued by the landlord, and for \$700.00 in monetary compensation from the landlord for ongoing plumbing issues and a partially broken stovetop in the rental unit.

On March 14, 2018, the landlord issued a One Month Notice to the tenant by posting the notice on his door. The landlord entered into evidence a copy of the One Month Notice. In that notice, requiring the tenant to end this tenancy by April 30, 2018, the landlord cited the following reasons for the issuance of the Notice:

Tenant is repeatedly late paying rent.

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit or property.

The landlord testified the apartment complex consists of two buildings. The parties agreed that both the tenant and landlord reside on the premises. The landlord testified that he manages both buildings and that the tenant's actions have disturbed residents in both locations. . He further testified that he regularly receives complaints about the tenant. He also testified that none of the residents who complained were not willing to testify at this hearing or provide complaint letters about the tenant. One witness testified at this hearing at the request of the landlord however the witness testified about an emergency at the residence and did not testify that he had any complaints about the tenant.

The landlord testified that the police were called on several occasions as a result of the tenant's actions. The landlord testified that the most significant police incident occurred on July 16, 2017, as a result of an intentional flooding. He testified that the tenant flooded his rental unit and ultimately caused damage to several units on the premises. The landlord testified that the tenant was arrested on that date. The landlord relied on a witness who testified at the hearing to describe the circumstances of the police attendance.

Witness DC testified that he lived in the apartment complex, and that he assisted with an emergency on July 16, 2017, involving the tenant. He was careful in his wording and limited his testimony to the facts of the incident during his testimony. He did not provide any testimony about the tenant's state at that time. He testified that he was not comfortable doing so. He testified that, at the request of the landlord, he entered the tenant's rental unit on July 16, 2017. He testified that the landlord had a key and that, when he and the landlord entered the rental unit, the tenant was in the bathroom and the bathroom was flooded with water. He testified that he called 9-1-1 and stayed in the unit until emergency services responded.

The landlord expanded on the testimony of the witness, stating that the tenant had purposely flooded the rental unit and that the sink was ripped off the wall. The police report submitted for this hearing indicated that, on attending to the unit, the police found

that the tenant's "suite was flooded as a result of him plugging his bath and ripping his sink unit from the wall." Portions of the police report were redacted for privacy reasons and referred to two dates when they were called to the residential premises because of the tenant. The first incident documented (a "noise disturbance") was dated January 28, 2017, and described with limited details the police's attendance to a noisy party where the occupants were asked to turn down the sound.

The second incident report, dated July 16, 2017, documented "mischief" or damage to property over \$5000.00 . The report indicated that the police were called and advised that the tenant's drains were plugged. When the police attended and discovered the tenant's flooded suite, they noted the sink off the wall, electrical wires inside the water, smashed floor tiles, wet clothes and ripped up toilet paper.

With respect to the flood incident, the tenant testified that there was no water shut off in the unit. The tenant testified that he used his clothes and other items in an attempt to stop the flow of water in his suite. He testified that he slipped during his attempts and that he received six stitches to his head after his fall. He testified that he paid the neighbours for all of their repairs and assisted one neighbor in making repairs to their unit after the flood. The landlord provided receipts for plumbing and repair materials to show that he bore the costs after the flood.

The tenant testified that his stove works partially. He testified that only the small burners (neither of the larger burners) work on the stove. He testified that the stove has been that way since the outset of his tenancy. He testified that, when he first raised the issue, the landlord promised he would get him a new stove. He testified that the landlord did not keep that promise. The landlord testified that he supplied a new stove 2 weeks prior to this hearing date.

The landlord testified that the tenant has regularly been late in paying his rent. The tenant disputed this claim, stating he always provided his rent on time. The tenant provided the copies of his cheques for the previous 9 months. The tenant's cheques were all dated the first of the month. The lower left hand corner of the cheques were dated. The tenant testified that the cheques were cashed on those dates. The landlord did not provide copies of the cashed tenant cheques with dates or his banking information to show that rent was repeatedly paid late.

The landlord argued that it is not his obligation to show that the tenant paid rent late but the tenant's burden of proof to show that he paid his rent on time. The landlord testified that he is one of the largest apartment owners in Canada and that he is a very pro-

active landlord: he testified that he uses the *Act* and that he does not take even security deposits from tenants. The landlord confirmed that he has not made an application against the tenant as of the date of this hearing.

The landlord submitted two items from 2018, with respect to the tenant. He submitted a recent noise complaint email about the tenant dated March 14, 2018, as evidence of the ongoing issues with the tenant. He also submitted a letter from the city dated January 8, 2018, which indicated that the city had inspected the rental unit on November 24, 2017. The January 2018 letter notified the landlord that the rental unit required repairs to several large wall openings and two discoloured areas. The letter described these openings and discoloured areas as violations of the city standards of maintenance, and that the landlord must repair the deficiencies within 30 days. The landlord testified that the tenant caused this damage. The tenant disputed that he caused the damage.

As well as applying to cancel the landlord's One Month Notice, the tenant applied for \$700.00 from the landlord. The tenant testified that the landlord failed to provide him with the facilities that he is entitled to as a renter (a fully functional stove, a properly repaired faucet handle, bathroom tiles that adhere to the floor). The tenant testified that the stitches after the flood on July 16, 2017 were as a result of his head hitting loose tiles. He submitted a photograph of the loose tiles and argued that the landlord had not properly affixed them to the floor. The tenant also sought to recover \$100.00 filing fee that he paid for this application from the landlord.

Analysis

The parties to this hearing both submitted documentary evidence including but not limited to receipts and partial cheques as well as photographic evidence. For example, the tenant submitted photographs of plumbing (shower and bath) parts. While I have reviewed all of the materials submitted by both parties for this hearing, I have only referred to the evidence that is relevant to the application before me. In my analysis, I refer solely to the evidence that I find relevant in determining whether this tenancy will end and whether the tenant is entitled to a monetary award against the landlord.

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. The landlord argued that the tenant has caused extraordinary damage to the property. However, I find that the landlord has not proven that the tenant caused recent extraordinary damage to the rental unit or premises. The landlord did not submit evidence that identified actions or negligence of the tenant that created the holes

identified by the city. I find that the landlord has not provided sufficient evidence of ongoing damage that is exceptional or unable to be addressed within the terms of the tenancy agreement or within the provisions of the Act at the end of this tenancy.

The landlord and tenant agree that repairs have been made to the neighbouring units although the parties dispute who paid for and completed those repairs. At this hearing, the landlord claimed that he is concerned the tenant will set a fire to the property because he is unstable. The landlord relied on the flooding incident on July 16, 2017 to support his One Month Notice. However, the flooding incident occurred approximately 8 months prior to the landlord's issuance of the One Month Notice. Based on the lack of evidence of ongoing damage to the rental unit or evidence to suggest an ongoing concern at the rental unit, I will not grant an Order of Possession on the grounds of extraordinary damage caused by the tenant, or on the grounds that the tenant has put the property at significant risk.

For the same reasons that I will not grant an Order of Possession on the grounds of extraordinary property damage or a risk of property damage, I find that the landlord is not entitled to an Order of Possession on the basis that the tenant seriously jeopardized the health, safety or lawful right of another occupant or the landlord. In making a claim on this ground to end a tenancy, the landlord relies again on the incident that occurred July 16, 2017. Again, I find that this incident is too dated to meet the burden of proof that the landlord must meet. Further, I find that the landlord has provided insufficient evidence of activity or negligence by the tenant that has resulted in jeopardy to the health or safety of a resident of the building or the landlord.

The landlord also claimed that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. As evidence of this claim, the landlord has testified that he has received multiple complaints about the tenant. The tenant disputed this claim. In support of his testimony, the landlord provided evidence of one incident of noise disturbance in January 2017, and one email message complaining of noise disturbance in March 2018. He also relies on the incident in July 2017, to suggest that the tenant has a pattern of disruptive behaviour.

The incidents for which the landlord has documentary evidence total three with the last complaint dated over four months prior to this decision. While the landlord testified that he regularly accepts complaints and is forced to call the police about the tenant, the documentary evidence from the landlord shows two incidents where the tenant may have been disruptive. These two incidents in January 2017, and March 2018, have scant details to explain the nature of the disruption or how they were resolved. The

incident dated July 16, 2017, and the flooding of the rental unit causing damage is more serious and well documented. However, the incident dated July 16, 2017, based on the material before me, is an isolated incident. Regardless of the circumstances leading to that incident or the damage that was caused, the evidence at this hearing is that the damage from that flood has been addressed. I find that the landlord has provided insufficient evidence to prove that this tenancy should end as a result of disruptive behaviour by the tenant. I will not issue an Order of Possession on this ground.

The landlord relied on his testimony to claim that the tenant has been repeatedly late paying rent. The tenant disputed this claim and provided copies of 9 months' worth of cheques dated the first of each month. The landlord did not provide evidence, in the form of bank statements or other evidence to show that the tenant's rent was in fact late. As the landlord has failed to meet the burden of proof with respect to his claim that the tenant repeatedly paid rent late, I will not grant an Order of Possession on the grounds of late payment of rent.

Residential Tenancy Policy Guideline No. 1 provides further details in the division of responsibility to the rental unit. I remind both parties that it is incumbent on both the landlord and the tenant to ensure the rental unit is kept in good repair. The nature of the landlord – tenant relationship requires communication to be respectful and clear. The landlord and tenant are encouraged to use respectful, written communication in order to address any future misunderstandings or disputes.

Based on the evidence before me, I find that the landlord has not met his burden in justifying his notice to end tenancy. The tenant's application to cancel that notice is granted. The tenancy will continue.

The tenant also applied for a monetary order indicating that his stovetop has only worked partially since the outset of his tenancy. The tenant did not provide evidence to show that he had, as required by section 27, 32 and 33 of the Act, requested the landlord's repair or replacement of the stovetop. Nor did the tenant produce documentary evidence to support the claim that the stovetop did not work in its entirety. The landlord disputes being aware of any difficulty with the stove until the end of May 2018. He provided undisputed testimony that, at that time, he replaced the stove. Therefore, I dismiss the tenant's application for \$600.00 from the landlord for the lack of a functioning stovetop. For the same reasons, I also dismiss the tenant's application for plumbing problems. The tenant did not provide evidence that shows he requested repairs for plumbing until the text message sent on April 30, 2018. After the landlord notified the tenant that he had arranged to send a plumber, the tenant sent a text

message cancelling the request for repair. This interaction occurred over 3 days. I find that the tenant has not proven he is entitled to compensation with respect to repairs needed and not provided by the landlord. To the contrary, I find that the text messages show the landlord's quick response in addressing the matter.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application. The tenant is entitled to reduce his monthly rent by \$100.00 for the month following the tenant's receipt of this decision and for one month only.

Conclusion

I grant the tenant's application to cancel the Notice to End Tenancy dated March 14, 2018. The tenancy shall continue.

I dismiss the tenant's application for a monetary order in the amount of \$600.00 without leave to reapply.

I grant the tenant a monetary amount of \$100.00. The tenant is entitled to reduce his rent by \$100.00 for one month only after the receipt of this decision.

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: June 28, 2018

Residential Tenancy Branch