



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR OPR LAT LRE MNDCT

Introduction:

Both parties and witnesses attended the hearing and gave sworn testimony. The landlord and his managers who gave evidence are hereinafter referred to as 'the landlord'. The landlord said they served the tenant personally with a 10 Day Notice to End the Tenancy for non-payment of rent dated May 10, 2018 to be effective May 21, 2018 and the tenant paid the outstanding rent within 5 days. The parties agreed that the tenant served the landlord personally with her Application for Dispute dated May 10, 2018. The tenant applies:

- (a) pursuant to section 46 of *The Residential Tenancy Act* (the Act) to cancel the Notice to End Tenancy;
- (b) To order the landlord to do repairs;
- (c) To receive compensation and/or a rent rebate for repairs not done;
- (d) To order the landlord to observe section 29 of the Act and to not illegally enter her suite;
- (e) For permission to change the locks.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The evidence is the tenancy began on February 1, 2017, the current rent is \$830 and the tenant paid a security deposit of \$400. The landlord testified that the tenant failed to pay \$110 of the rent for May 2018 and was served with a Notice to End the Tenancy. However she paid the rent within 5 days of receiving the Notice.

The tenant testified she has been very concerned about the lack of repair. In evidence she provided a written request to have repairs completed. She requested a bathtub plug, and repairs be done to an outlet and wires and a kitchen floor. The landlord said

repairs had now been done and the tenant agreed they were completed but pointed out that they had been necessary for several months before she provided a written request in November 2017. The repairs were not completed until May 2018 and there are still some tears in the floor caused by the refrigerator installation. The landlord said there have been problems with gaining entry into the unit even after giving the requisite 24 hour notice. The tenant insists on being present. She denied entry once and closed the door on the landlord's arm; the police were called. The tenant said she denied entry to other tenants who were accompanying the landlord as she does not want random tenants entering her unit. The landlord said she brought witnesses for safety issues.

The tenant accused the landlord of illegal entry and mentioned one instant where she found the bathtub plug in her unit after she had complained. She has no proof of other incidents but has found items moved around. She requests permission to change her locks.

The tenant also notes the landlord is invading her privacy by entering her mailbox. The landlord said the tenant had not changed her address and the mailman was having difficulty. He gave the mail to them and they put it under her door.

Analysis:

The Notice to End a Residential Tenancy is based on non-payment of rent. Section 46 (4) of the Act states the Notice is of no effect if the overdue rent is paid within 5 days. I find the tenant paid it within 5 days of receipt of the Notice so the Notice is of no effect. The tenancy continues.

The tenant claims compensation from the landlord in the amount of \$1440.00. I find awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with

this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the tenant to prove her claim. I find insufficient evidence that the landlord breached the Act or tenancy agreement by refusing to repair as needed. I find the landlord's evidence credible that any delay in repair was caused by the tenant refusing entry. Their credibility is supported by the tenant's acknowledgement that she refused entry because the landlord was bringing along other tenants as witnesses. It is also supported by the fact that the tenant has refused to sign a Residential Tenancy Agreement so no suite inspection has been done. I find the facts in this case are complicated as there is a close family relationship between the managers and the tenant.

I find the landlord has now completed most of the repairs and is prepared to repair some tears in the kitchen floor also.

I find insufficient evidence to support the tenant's contention that the landlord is entering her suite illegally. I find the owner's testimony credible that he requires his managers to always give 24 hours notice of entry as required by section 29 of the Act. Therefore, I decline her request to authorize her to change her locks. I find insufficient evidence to support her allegation that the landlord is invading her privacy by interfering with her mail.

However, although I find insufficient evidence to support the allegations of the tenant, I find section 28 of the Act requires the landlord to protect the tenant's right to privacy and peaceful enjoyment whether or not she is a relative and section 29 of the Act requires the landlord to give 24 hours Notice of Entry. The landlord is ordered to observe these sections of the Act.

Conclusion:

The Notice to End Tenancy dated May 10, 2018 is of no effect. The tenancy continues. I dismiss the tenant's claim for compensation in its entirety without leave to reapply. I find insufficient evidence to support her claim for compensation. Her filing fee was waived.

I HEREBY ORDER THAT the landlord obey the provisions of section 28 of the Act and protect the tenant's right to privacy and peaceful enjoyment. I ORDER that they are not to handle her mail but have the postal service handle it appropriately.

I HEREBY ORDER THAT the landlord obey the provisions of section 29 of the Act and give the tenant 24 hours Notice of Entry, except in case of emergency. I ORDER that the landlord not have other tenants accompany them inside the suite. If they need witnesses, the witnesses are to remain outside the tenant's door.

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: July 10, 2018

Residential Tenancy Branch