



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, OLC, PSF, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order suspending or putting conditions on the Landlord’s right of entry into the rental unit - Section 70;
3. An Order for the Landlord’s compliance - Section 62;
4. An Order for the provision of services and facilities - Section 65;
5. An Order for a rent reduction - Section 65; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to an order limiting the Landlord’s right of entry, an order in relation to the Landlord’s compliance and an order for the provision of services and facilities?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on November 1, 2017. Rent of \$650.00 is payable on the first day of each month. The Landlord lives next to the Tenant. On June 7, 2018

the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by posting the Notice on the door. The Notice states the following reason:

The Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health, safety or lawful right of another occupant or the Landlord.

The Landlord states that on May 31, 2018 the Tenant came to the Landlord's unit to pay the rent and informed the Landlord that the Landlord was stalking the Tenant, had caused the Tenant to lose a job, and that the unit caused an infection in the Tenant. The Landlord states that when the Landlord asked the Tenant to clarify his concerns the Tenant would not state anything further and refused to talk any further. The Landlord states that the Tenant was shaking and clenching his fist while talking and that this behavior was unusual for the Tenant who had always otherwise been more than nice. The Landlord states that this change in his personality caused her fear and she reported the incident to the police. The Landlord states that the police did not investigate and that the Landlord was told to evict the Tenant. The Landlord states that since this one incident she has not seen the Tenant and has not been disturbed by the Tenant.

The Tenant states that his reason for taking the tenancy was that the Landlord assured the Tenant that she could be trusted not to bother the Tenant. The Tenant states that this did not happen and that the Landlord immediately started to bother the Tenant and that she would also stop him on this way out of the unit to bother him. The Tenant denies that he seriously jeopardized the Landlord in any way and states that he did not threaten or disturb the Landlord and that the police never came to talk with him about the incident.

The Tenant confirms that no details or evidence was provided in relation to the claims for the Landlord entry, compliance and provision of services. The Tenant states that he only wants the Landlord to comply with the Acts provisions for entry and to comply with the provision of a washing machine.

The Tenant states that the tenancy includes the provision of an in-suite washer and dryer and that from the onset of the tenancy the washing machine did not work. The Tenant states that the Landlord was immediately informed of the failure but did not replace the laundry machine for 5 months. The Tenant states that although the Landlord offered to wash the Tenant's laundry the Tenant was uncomfortable with this offer. The Tenant states that dispute his discomfort he

did take his laundry to be washed by the Landlord until the washing machine was replaced. The Tenant claims a rent reduction of \$500.00 for the loss of use of the in-suite washing machine.

The Landlord states that at some point or about a month into the tenancy, the Tenant did inform the Landlord of the problem with the washing machine. The Landlord states that the Tenant also offered to help the Landlord by searching online for a replacement machine. The Landlord states that she accepted this help as she does not use a computer. The Landlord states that the Tenant did give the Landlord a couple of numbers but that these contacts did not work out. The Landlord states that after the final number provided by the Tenant, the Landlord obtained and replaced the washing machine. The Landlord states that she thought the Parties were working together on the washing machine problem. The Landlord states that the Tenant never said anything to her during the time without the machine. The Landlord states that the Tenant would sometime come and have coffee when he brought his laundry. The Landlord also states that the Tenant would maybe come in the evenings to do his laundry and that the Landlord never saw when the Tenant brought his laundry. The Landlord states that she never did the laundry and that her family members would wash the laundry for the Tenant.

The Tenant states that the Landlord initially told the Tenant that a replacement machine would be provided within a month. The Tenant states that he waited for a month and nothing happened. The Tenant states that he does not like to use his voice and that he politely mentioned enough times during the period of taking his laundry to the Landlord that he was not happy with not having his own machine.

Analysis

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy where, inter alia, the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Ending a tenancy is a serious matter and the evidentiary test is whether or not it may be found on a balance of probabilities that a tenant has committed an act or acts sufficient to justify a landlord terminating the tenancy. Given the Landlord's evidence that the police did not investigate the Landlord's complaint of being threatened and considering the Tenant's evidence that no threats were made, I find on a balance of probabilities that the Tenant did not threaten the Landlord. Further, given the Landlord's evidence of a one-time incident,

that the Tenant did not get into any argument with the Landlord at the time, and that the Tenant was otherwise always nice, I find on a balance of probabilities that the Tenant has not seriously jeopardized any right of the Landlord and that the Landlord has therefore not provided evidence sufficient to justify an end to the tenancy. I find that the Notice is not valid for its stated reason and I cancel the Notice. The tenancy continues.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Section 65 of the Act provides that if a landlord has not complied with the Act, the regulations or a tenancy agreement, an order may be made that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Given the undisputed evidence that the tenancy includes an in-suite washing machine and that the Tenant was without this machine for several months I find that the Landlord did not comply with the tenancy agreement and that the Tenant is entitled to a retroactive reduction in the rent. However given the undisputed evidence that the Tenant did offer to assist the Landlord with finding a replacement machine, that the Tenant did not have to go further than next door to get his laundry washed, that the Tenant did not clearly object to using the Landlord's offer of assistance, and considering that the Tenant otherwise had full use of the unit, I find that the Tenant has only substantiated a nominal amount of **\$100.00** for the inconvenience.

As the claims for compliance and provision of services were made in relation to the loss of the washing machine and as the washing machine has been replaced I dismiss these claims. As the Tenant only wants the Landlord to abide by the Act in relation to entries into the unit I dismiss the claim restricting the Landlord's rights of entry as provided for by the Act.

As the Tenant has been primarily successful with the matters in dispute I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$200.00**. The Tenant may deduct this entitlement amount from future rent payable in full satisfaction of the claims.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$200.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 13, 2018

Residential Tenancy Branch