



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RO, OILC, CNR, FF

Introduction

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

1. An Order for emergency and other repairs - Section 32;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order cancelling a notice to end tenancy - Section 46; and
4. 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

Are the Tenants entitled to an order for repairs?

Are the Tenants entitled to an order for the Landlord’s compliance?

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant states that the tenancy of an entire house containing separate upper and lower suites started in 2011 with rent of \$2,100.00 payable on the 20th day of each month. At the outset of the tenancy the Landlord collected \$1,050.00 as a security deposit and \$1,000.00 as a pet deposit. The Tenant states that in 2016 the Parties

verbally agreed that the Tenant would only have a tenancy for the upper unit at a rent of \$1,100.00 payable on the 20th day of each month. The Tenant states that this rental amount included the water for both units. The Tenant states that the Landlord entered into a separate verbal agreement with a 3rd party for the lower unit with rent of \$1,000.00 payable on the 20th day of each month. The Tenant states that this 3rd party is his daughter who moved out of the lower unit on August 1, 2018 in order to stop her children from being apprehended due to the presence of mold in the lower unit.

The Tenant states that on August 21, 2018 the Landlord served the Tenants with a 10 day notice to end the tenancy for unpaid rent (the "Rent Notice"). The Rent Notice sets out that the Tenant failed to pay rent of \$2,100.00. The Tenant states that since this amount required to be paid is not his rent payable the Tenant disputed the Notice on the basis that the amount outstanding is not correct. The Tenant states that he has the full rent for August 2018 and will pay it as soon as the amount is confirmed. The Tenant states that prior to being given this Rent Notice the Landlord had given the Tenant a handwritten note dated August 6, 2018 informing the Tenants that the tenancy would end and the Tenants were expected to move out of the unit by September 6, 2018 (the "Landlord's Use Notice"). The Tenant disputes the validity of the Landlord's Use Notice and seek an order that the Landlord provide notices to end tenancy that comply with the Act.

The Landlord states that the house is owned by the Landlord's parents and that the Landlord's brother previously acted as the landlord throughout the tenancy until the brother became deceased in June 2018. The Landlord states that she then started collecting rents and serving the notices to end tenancy. The Landlord states that she has no knowledge of any of the terms of the tenancy for either suite and has not been able to locate any documentation, including financial records, in relation to the tenancy. The Landlord confirms that separate rents of \$1,200.00 and \$1,000.00 were collected for each of the upper and lower units on July 20, 2018. The Landlord agrees that rent for both units is payable on the 20th day of each month. The Landlord states that while

she believes that the house was rented as a single unit she has nothing upon which to base this belief. The Landlord states that it has no key for the lower unit. The Tenant states that it has a copy of a key for the lower unit as this is used to access the shared laundry. The Tenant agrees to provide the Landlord with this key. The Parties agree that the Landlord may collect this key between noon and 5:00 on September 11, 2018 in order to make a copy and that the Landlord will return the key to the Tenant no later than 5:00 p.m. on September 12, 2018.

The Tenant states that mold is in ceiling of the unit caused by a leak in the roof. The Tenant states that the Landlord was informed about the leaky roof problem a year ago and had not done anything. The Tenant states that mold from the lower unit is also causing mold to grow in the upper unit bathroom. The Tenant states that the current Landlord was informed more recently and has done nothing.

The Landlord states that it is not sure if there is a leak in the roof. The Landlord states that the Tenants never reported mold in the upper unit and that the Landlord was only informed and did observe a stain on the ceiling in the upper unit. The Landlord states that no inspection has been done on the roof or the upper unit for mold although they have found mold in the lower unit. The Landlord states that a plumber was brought in for the work on the bathroom however the plumber said that more than what the plumber could repair was required. The Landlord states that a restoration company recommended replacing the bathroom tubs in both the upper and lower unit.

The Tenant states that the deck broke a year ago and although the Landlord was informed nothing was done to repair the deck. The Tenant states that as the deck was hazardous in that condition the Tenant stopped using the deck and closed it off but that now there is now no ability to escape from the deck door in case of fire. The Tenant provides photos of the deck. The Landlord states that it will start looking for repairs to the deck.

Analysis

Section 52 of the Act provides that in order to be effective a notice to end tenancy, when given by a landlord, must be on the Residential Tenancy Branch (the “RTB”) approved form. Based on the undisputed evidence that the Landlord did not use the RTB approved form to end the tenancy for landlord’s use, I find that the Landlord’s Use Notice is not effective to end the tenancy and that the tenancy therefore is not ended as a result of the Landlord’s Use Notice. The Landlord remains at liberty to serve the Tenant with an approved RTB form if the Landlord has a good faith intention to end the tenancy on any of the allowed grounds to end the tenancy for landlord’s use under the Act.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 50(1) of the Act provides that a person may make an application in relation to a dispute with the person's landlord or tenant in respect of, inter alia, the rights and obligations under the terms of a tenancy agreement that relate to the tenant’s use and occupation of the unit. Given the Tenant’s evidence that it was only renting the upper unit since 2016, considering that the Landlord has no evidence of any of the terms of the tenancy or the rental payments since 2016, and given the Landlord’s evidence that it collected separate rent payments for the upper and lower suited in July 2018, I find on a balance of probabilities that the Tenants are only renting the upper unit for \$1,100.00 per month payable on the 20th day of each month.

Section 46(4) of the Act provides that a tenant may, within 5 days after receiving a notice to end tenancy for unpaid rent, pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. As the amount of rent noted as being due on the Notice is greater than the amount of rent that was payable I find that the Notice is not valid and that the Tenants are therefore entitled to its cancellation. The tenancy continues. The Tenants are ordered to pay the correct amount of rent to the Landlord forthwith. The Landlord remains at liberty to

serve the Tenant with another 10 day notice to end tenancy if the Tenants fail to pay the rental amount as required in the future.

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 33(1) of the Act provides that "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Given the Landlord's evidence of not having inspected the upper unit for mold, considering the undisputed evidence of a stain on the ceiling of the upper unit and given the Tenants' evidence of a leak from the roof I find on a balance of probabilities that the Tenant has substantiated that the Landlord has failed to act at a minimum to inspect the roof for a leak. As this may be considered an emergency repair and as the Landlord has not voluntarily agreed to make any repairs by any date I order the Landlord to have a professional roofer inspect the roof for leaks no later than September 16, 2018 and if any leaks are detected to immediately make interim repairs to seal the affected area or areas and to make final repairs as soon as possible thereafter. I further order the Landlord to inspect the upper unit and ceiling for mold no later than September 16, 2018

and if mold is discovered in any areas to make repairs to those areas as soon as possible.

Given the Tenants' evidence of the state of the deck, in particular the photos, I find on a balance of probabilities that the deck is completely unusable and would likely cause serious harm if anyone were to use the deck for any reason. Based on the undisputed evidence that both the previous landlord and the current Landlord were informed of the deck and took no action I find on a balance of probabilities that the Tenant is entitled to an order for repairs of the deck. I therefore order the Landlord to repair the deck as soon as possible.

Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation. As the Parties have made an agreement in relation to a key to the lower unit, as the Tenants carry no obligations in relation to the lower unit and as this agreement is not a part of the Tenant's application I decline to make an orders in relation to the key to the lower unit.

As the Tenants have been successful with their application I find that the Tenants are entitled to recovery of the **\$100.00** filing fee and the Tenants may deduct this amount from future rent payable.

Conclusion

Both notices to end tenancy are cancelled and the tenancy continues.

The Landlord is ordered to inspect the unit for mold and leaks from the roof and to make final repairs to the ceiling and deck as soon as possible.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. 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: September 12, 2018

Residential Tenancy Branch