



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Amos Realty & Property Management Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, ERP, OLC

Introduction

This hearing was convened in response to an application by the Tenants 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 for emergency repairs - Section 32; and
3. An Order for the Landlord to comply - Section 62.

The Landlords and Tenants 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 the stated reason?

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

Are emergency repairs required?

Is the Tenant entitled to an order compelling the Landlord to comply with the tenancy agreement or Act?

Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2016. Rent of \$1,300.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. Paragraph 17 of the addendum attached to the tenancy agreement provides that any “addition of pets during the length of the tenancy

need the written permission of the Landlord prior to bringing the pet onto and or into the rental property.” On August 14, 2018 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The stated reason on the Notice is “breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The Notice details that the Tenant “has brought a cat into the residence after being instructed not to bring cats into residence.”

The Landlord states that the pet clause in the tenancy agreement addendum is a material term as at the outset of the tenancy the Landlord determined that with the number of occupants in the unit living in the unit a pet would be too much for the unit as it was considered by the Landlord to be filled to capacity. The Landlord states that the Tenants were told at the outset that no pets would be allowed for this reason. The Landlord states that on July 29, 2018 two additional persons were allowed to reside in the unit. It is noted that the Landlord collected a greater amount of rent for these extra occupants.

The Landlord states that on July 25, 2018 the unit was inspected, a cat smell was present and cat litter was seen on the back stairs. The Landlord states that an email was also received from a 3rd party informing the Landlord that the Tenants had 5 cats in the unit. The Landlord states that on July 26, 2018 the Tenants were sent a breach letter by email and the Landlord provides a copy of this email. The Landlord states that the Tenants have not complied with the breach letter however the Landlord states that he has no evidence of either compliance or non-compliance or evidence of a belief that the Tenants have not complied.

The Tenant states that the Landlord’s email dated July 26, 2018 only states that they cannot have a cat “for now”. The Tenant states that there is nothing in the email stating that there is any number of cats in the unit and the email does not make any reference to any breach of a material term. The Tenant states that the pet clause is not a material

term as the owner of the unit asked the Tenants about who told them they could not have a cat and because the Landlord was considering allowing the cat with the daughter's move into the unit in August 2018. The Tenant states that the one cat that was with the daughter given permission to reside at the unit was given to the neighbor on August 1 or 2, 2018. The Tenant states that the two kittens that were present on August 14, 2018 were only there for a couple of hours before they were picked up and taken to live with a 3rd party. The Tenant states that the Landlord was informed on that date that the kittens would be gone shortly however the Landlord simply chose to serve the Notice. The Tenant states that the person who sent the Landlord a note alleging that the Tenants had 5 cats was the ex-spouse of her daughter who sent the email as revenge for having been convicted of breaking the daughter's window. The Tenant states that they currently have no pets in the unit. The Tenant states that the Landlord did not carry out an inspection on July 25, 2018 and that the inspection was done on August 8, 2018 when the daughters moving boxes would still have smelled of cat since the boxes and cat had been together for some time in a garage prior to the move.

The Landlord states that no discussion was held with the owner on the matter of whether the owner was agreeable to the Tenants having pets as the owner has given the Landlord complete discretion on whether or not pets are allowed in the unit. The 2nd Landlord states that at the end of July 2018 the owner informed her that he did not want pets in the unit.

The Tenant states that the emergency repair was in relation to the water heater and that this has since been repaired. The Tenant states that there are no other emergency repairs but that the Landlord has still not repaired a basement window that was broken at the outset of the tenancy. The Tenant states that the Landlord has known about this window since the outset of the tenancy and has again been asked for this repair by email to the Landlord dated August 8, 2018 wherein the Tenant described the problem. The Landlord states that the Tenant must fill out a work order before the Landlord will act and that no work order has been completed. The Landlord was given an opportunity

to agree to a timeline for this repair at the hearing and refused insisting that the work order must first be completed by the Tenant. It is noted that paragraph 12 of the addendum to the tenancy agreement provides that a work order must be filled in by a tenant seeking repairs and that no repairs will be made without a completed work order.

The Tenant states that the Landlord has both talked to her 11 year old child about tenancy matters and has served notices to her 11 year old child. The Tenant states that this is not acceptable and asks for an order that the Landlord comply with the Act and not communicate with the child about tenancy matters or serve any documents to the child. The Landlord states that the child looks about 16 or 17 years old and that the Landlord will ask for identification before speaking to others in the unit.

The Tenant states that the Landlord is coming onto the property without notice or permission and is turning on the water and using the Tenant's personal property to water the lawn. The Tenant states that the Landlord is also looking into the windows of the unit. The Tenant asks for an order stopping the Landlord from coming onto the property without written notice or permission. The Landlord agrees that he has gone onto the property to water the lawn as the unit is located in a very dry area where regular watering is necessary. The Landlord argues that this is not a breach of the Act or a breach of the Tenant's right to privacy. The Landlord states that he has never looked into the windows of the unit and that anyone on the street can see into the unit windows.

Analysis

Section 47(1)(h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. Policy Guideline #8 provides that to end a tenancy agreement for breach of a material term the party alleging a breach must inform the other party in writing that:

- there is a problem;
- they believe the problem is a breach of a material term of the tenancy agreement;
- the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- if the problem is not fixed by the deadline, the party will end the tenancy.

As the email provided in evidence by the Landlord as the breach letter does not mention any material terms, does not provide a deadline and does not indicate that a failure to correct the situation will result in a notice to end the tenancy for breach of a material term, I find that the Landlord has not given the written notice required under the Act. I find therefore that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

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 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if, inter alia, the term is inconsistent with this Act or the regulations, or the term is unconscionable. Given that the Landlord is required to maintain a unit and to make emergency repairs and considering that the requirement of a completed document could result in a delay in the Landlord being informed of an emergency repair and, if not completed, could result in the emergency creating more damage I find that the paragraph in the tenancy agreement requiring the completion of a report before repairs will be made is unconscionable and therefore not enforceable. I accept the Tenant's evidence that the Landlord was given an email about the required repairs in August 2018⁷. I consider the Landlord's ongoing refusal to make repairs without the completion of a particular form to amount to willful blindness in the circumstances and a

breach of the Landlord's obligations to make repairs in a timely manner. As there is no dispute that the window has been broken since the onset of the tenancy I find that the Tenant is entitled to an order for its repair and I order the Landlord to repair the window within 48 hours receipt of this Decision.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord comply with this Act, the regulations or a tenancy agreement. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance. The Act does not allow service of any documents to a minor child. At common law a child has no authority to enter into binding contracts and I note that, correctly, no child is named as a tenant on the tenancy agreement. While there is nothing under the Act stopping a landlord from speaking with a child, where a parent objects to such conversation it does not seem correct that a landlord would continue to engage a child in tenancy business.

As the Landlord has not disputed talking with the child in question, I find that the Tenant has substantiated that the Landlord has breached the Tenant's right of quiet enjoyment of the unit by speaking with a child at the unit without the permission of the parent or adult in charge. In order to give effect to the Tenant's rights I order the Landlord to refrain from speaking to any minor occupant in the unit for any purpose related to the tenancy or, for any other purpose unless agreed upon by the Tenant. Should the Landlord act in this manner again the Tenant has leave to reapply for compensation for the past and continuing behavior of the Landlord. I would caution the Landlord about asking for identification from any person in the unit as this could very well be another breach of the Tenant's privacy. I strongly caution the Landlord to communicate only with the person named on the tenancy agreement about tenancy matters and to follow the Act's requirements for service of any notices to the Tenant named on the tenancy agreement.

Residential Tenancy Branch Policy guideline # 7 provides that the Act does not require that notice be given for entry onto **residential property**, however, the Act recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises. Although the Landlord denies looking into the windows of the unit I note the Tenant's submitted evidence of the Landlord following the Facebook page of a person related to the Tenant and using the information gained from that page for tenancy purposes. This tends to suggest that the Landlord does not have a firm grasp of privacy rights. For this reason and based on the undisputed evidence that the Landlord has been in the Tenant's yard without notice or permission and has used the Tenant's personal property without the Tenant's permission I find on a balance of probabilities that the Landlord breached the Tenant's right to privacy. Again in order to give effect to the protection of the Tenant's rights of privacy I order the Landlord to only enter the property with the provision of written notice or the express permission of the Tenant or when collecting rent, serving documents and delivering Notices of entry to the premises. Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation for past and continuing breaches by the Landlord.

Conclusion

The Notice is cancelled and the tenancy continues.

I order the Landlord to repair the broken basement window within 48 hours receipt of this Decision.

I order the Landlord to refrain from speaking to any minor occupant in the unit for any purpose related to the tenancy or, for any other purpose unless agreed upon by the Tenant.

I order the Landlord to only enter the property with the provision of written notice to the Tenant or with the express permission of the Tenant or when collecting rent, serving documents and delivering Notices of entry to the premises.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 17, 2018

Residential Tenancy Branch