



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CORNERSTONE PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL CNC MNDC LRE OLC PSF MT RP FF

This hearing was convened to address 3 applications for dispute resolution submitted by the Tenant. The first application was made on August 16, 2018, and was amended on August 17, September 7 and 17, 2018. The second application was made on September 19, 2018. The third application was made on October 4, 2018. Collectively, the Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the “Act”):

- an order cancelling a Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use, dated July 27, 2018 (the “Four Month Notice”);
- an order cancelling a One Month Notice to End Tenancy for Cause, dated September 24, 2018 (the “One Month Notice”);
- a monetary order for money owed or compensation for damage or loss;
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order that the Landlord provide services or facilities required by the tenancy agreement or law;
- an order granting more time to make an application for dispute resolution;
- an order that the Landlord make repairs to the rental unit; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing in person due to a hearing impairment. The Tenant was accompanied by B.D., a friend and advocate. The Landlord was represented at the hearing by V.M. and R.S., who attended the hearing by telephone conference. The Tenant, B.D., V.M., and R.S. provided affirmed testimony.

The Tenant testified that Landlord was served with the Application packages, amendments and evidence in person at the Landlord's business address. On behalf of the Landlord, V.M. and R.S. acknowledged receipt.

The Landlord submitted documentary evidence in response to the Applications. According to V.M. and R.S., this was served on the Tenant by registered mail. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the end of the hearing, all in attendance were provided an opportunity to add any evidence they thought was important. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's requests to cancel the Four Month Notice and the One Month Notice. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

In addition, the Tenant named various parties in the 3 applications submitted. Following a discussion during the hearing, the parties agreed the applications would be amended so that this Decision would reflect only the name of the Landlord as it appears in the tenancy agreement. Accordingly, pursuant to section 64(3)(c) of the *Act*, and with the agreement of the parties, I amend the applications to reflect the name of the Landlord as it appears in the tenancy agreement.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the Four Month Notice?
2. Is the Tenant entitled to an order cancelling the One Month Notice?

Background and Evidence

The Tenant lives in one side of a 5-bedroom duplex. A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on March 1, 2015. Currently, rent in the amount of \$2,264.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$1,050.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the Four Month Notice, which was issued on the basis that the Landlord intends to “perform renovations or repairs that are so extensive that the rental unit must be vacant.” The Tenant acknowledged receipt of the Four Month Notice on July 27, 2018.

During the hearing, V.M. testified that work needs to be completed to address “extensive...long-standing” water damage in the Tenant’s rental unit. She testified the Landlord has spent almost \$100,000.00 in remediation work on the other side of the duplex. V.M. confirmed that the work will address floor beams and potential rot in walls and trusses. She also advised that asbestos may be an issue in the Tenant’s rental unit. Accordingly, V.M. suggested it would not be safe to complete the work with the Tenant living in the unit. In addition, V.M. advised that flooring, cupboards, and countertops would be replaced. When asked, V.M. testified the property needs to be vacant to complete some of the repairs. However, she also confirmed that a significant reason for wanting the rental unit to be vacant was to conduct investigations regarding the extent of the damage on the Tenant’s side of the duplex. Although it is anticipated that the work will begin in December 2018, V.M. was unable to provide a time estimate for the work to be completed during the hearing. She testified she does not believe permits are required because they were not required to complete the work on the other side of the duplex.

In support, the Landlord submitted an estimate regarding the anticipated repair, although V.M. testified the Landlord made the decision to proceed with a different contractor. V.M. testified that a structural engineer had been consulted by the general contractor.

In addition, V.M. advised she is going through a divorce and she is unsure about what will be done with the rental property once the work is complete. She advised it may be sold or re-rented.

In reply, the Tenant denied there is extensive water damage as claimed by V.M., or that the Landlord requires vacant possession. He also questioned the relevance of the amount paid for repairs to the other side of the duplex when no damage has been confirmed on the Tenant's side. He suggested that any issues regarding the drywall are likely due to the house "settling". In addition, the Tenant testified that he has provided the Landlord with access to the rental unit on request. The Tenant also testified that the roof was recently replaced and that damage in the trusses would have been addressed at that time. He stated he has looked into the attic and observed it is dry.

In addition, the Tenant noted that no permits have been obtained and suggested it is likely the Landlord would require permits for structural changes or asbestos abatement to occur.

The Tenant also suggested that multiple visits to the rental property by the Landlord have resulted in a loss of quiet enjoyment. The Tenant also suggested the Landlord is trying to evict him for convenience so the unit can be re-rented or the rental property can be sold more easily. In support, the Tenant referred to several audio recordings of conversations with a contractor.

The Landlord has also issued the One Month Notice. Although the second page was not submitted into evidence, the parties agreed it was issued on the basis there are an unreasonable number of occupants in the rental unit. The Tenant acknowledged receipt of the One Month Notice on September 24, 2018.

On behalf of the Landlord, R.S. referred to paragraph 13 of the tenancy agreement which stipulates that only those named in the tenancy agreement may reside at the rental unit, and that Landlord's consent is required for individuals who are in the rental unit for more than 14 days in a calendar year. Failure to obtain the Landlord's approval is a breach of a material term of the tenancy agreement. However, R.S. testified that

although he has “no proof of this”, he suspects the Tenant has permitted an unreasonable number of occupants in the rental unit. R.S. testified that these conclusions were based on belongings observed in the rental unit and locks on doors. The Landlord’s main concern, as expressed by R.S., appears to have been notification of the number of occupants.

In reply, the Tenant testified that the Landlord permitted additional occupants. However, he denied there are an unreasonable number of occupants in the rental unit. He testified there are currently 3 occupants in the 5-bedroom unit. The Tenant also suggested the Landlord’s concerns about the number of occupants in the rental unit only arose after the Tenant’s first application was submitted.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(6)(b) of the *Act* permits a landlord to end a tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The Landlord must provide evidence in support of ending the tenancy on a balance of probabilities.

In this case, I find there is insufficient evidence before me that the repairs referred to by V.M. require the rental unit to be vacant. It appears that the work referred to by V.M. *may* be required but that further investigations are required. Landlords are permitted to enter rental units to conduct inspections or have contractors complete assessments, in accordance with section 29 of the *Act*. In any event, even if the damage is as extensive as suggested by V.M., I find it is more likely than not that structural repairs and asbestos abatement would require permits. However, no permits were submitted into evidence by the Landlord. Accordingly, I find the Four Month Notice is cancelled.

Section 47(1)(c) of the *Act* permits a landlord to end a tenancy if there are an unreasonable number of occupants in the rental unit. The Landlord must provide evidence in support of ending the tenancy on a balance of probabilities.

In this case, I find there is insufficient evidence before me to conclude there are an unreasonable number of occupants in the rental unit. Indeed, R.S. acknowledged he has no proof and confirmed his belief was based on the contents of the rental unit and locks on doors in the rental unit. Accordingly, I find the One Month Notice is cancelled.

Having been successful, I find the Tenant is entitled to recover the filing fee. However, although it appears the Tenant paid 3 filing fees, it was not necessary to do so. As a result, I find the Tenant is entitled to recover only \$100.00, which I order may be retained from a future rent payment at the Tenant's discretion.

Conclusion

I order that the Four Month Notice and the One Month Notice are cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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: November 7, 2018

Residential Tenancy Branch