



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, RP, MNDCT, RR, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order for emergency repairs, pursuant to section 33;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 11:32 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 11:00 a.m. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant testified that the landlord was served the notice of dispute resolution package by registered mail on November 8, 2018. The tenant entered the Canada Post receipt and tracking number into evidence to confirm this registered mailing. I find that the landlord was deemed served with this package on November 13, 2018, five days after its mailing, in accordance with sections 89 and 90 of the *Act*.

The tenant testified that she served her evidence on the landlord via express post mail but could not recall on what date. The tenant entered photographs of the express post packages with

tracking numbers into evidence. I find that the landlord was served with the tenant's evidence package in accordance with section 88 of the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice to End Tenancy and emergency repairs are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy and to address the need for emergency repairs.

I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except the tenant's claims for:

- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47;
- an Order for emergency repairs, pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Issue(s) to be Decided

1. Is the tenant entitled to cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47 of the *Act*?
2. Is the tenant entitled to an Order for emergency repairs, pursuant to section 33 of the *Act*?
3. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of tenant, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant provided the following undisputed testimony. This tenancy began in August 2017 and is currently ongoing. Monthly rent in the amount of \$1,150.00 is payable on the first day of each month. A security deposit of approximately \$588.00 was paid by the tenant to the landlord.

The tenant testified that on or about the 2nd day of November 2018 she received a One Month Notice to End Tenancy for Cause with an effective date of December 31, 2018 (the "One Month Notice") which was slipped under the door of the subject rental property. The One Month Notice was entered into evidence.

The One Month Notice stated the following reason for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

In the details of cause section of the One Month Notice it states that extraordinary sliding door damage was found by the owner of the subject rental property. The One Month Notice was not signed by the landlord.

The tenant testified that the sliding glass doors in question are in the living room of the subject rental property and open onto a balcony. The tenant testified that she first noticed that they were not working properly in September of 2017, shortly after she moved in. The tenant entered into evidence a text message from the tenant to the landlord dated September 9, 2017 which informs the landlord that the sliding glass door is not shutting properly. The tenant testified that the landlord sent a maintenance person to fix the sliding glass doors in October of 2017. The tenant testified that the repair work was only a temporary fix and that approximately one month later, the sliding glass doors were again not shutting properly and could not be locked.

The tenant provided undisputed testimony that between October of 2017 and November of 2018 she sent the landlord several text messages requesting that he fix the sliding glass door because they did not close properly and could not be locked. The tenant entered photographs of the sliding glass door into evidence which clearly shows that the sliding glass doors do not close all the way allowing rain and air to freely pass through. The tenant testified that instead of fixing the doors, the landlord served her with the One Month Notice.

The tenant testified that a burglar gained access to her balcony from the roof and broke into the subject rental property through the sliding glass doors which she cannot lock. The tenant testified that after this incident the landlord offered to let her out of her lease, but she declined. The tenant testified that she is concerned for her safety and her belongings because the sliding glass door does not lock.

Analysis

I find that while slipping the One Month Notice under the tenant's door does not accord with the service requirements under section 88 of the *Act*, she was sufficiently served for the purposes of this *Act*, in accordance with section 71 of the *Act*, on November 2, 2018 because the tenant acknowledged receipt of the One Month Notice on that date.

When a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove they had sufficient cause under the *Act* to issue the notice. As the landlord did not attend the hearing, I find that he has failed to establish, on a balance of probabilities, that he had cause to end the tenancy under the *Act*. As a result, the One Month Notice is cancelled, and the tenancy continues in full force and effect until it is ended in accordance with the *Act*.

In addition, I find that since the landlord did not sign the One Month Notice, it does not meet the form and content requirements of a notice to end tenancy pursuant to section 52 of the *Act*. I therefore also cancel the One Month Notice for its failure to meet the requirements of section 52 of the *Act*.

Section 33(1) of the *Act* defines emergency repairs as those that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and includes repairing damaged or defective locks that give access to a rental unit. I find that the sliding glass doors grant access to the subject rental property as they have been used on at least one occasion by a burglar to gain access. I find that the repairs being sought from the landlord are emergency repairs.

Section 32(1) of the *Act* requires a landlord to provide and maintain the residential property in a reasonable state of repair.

Based on the foregoing provisions of the *Act*, the oral and photographic evidence of the tenant, I find that the landlord has breached section 32 of the *Act* by failing to make emergency repairs to the subject rental property. As a result, I order the Landlord to take immediate action to complete the necessary remedial work to the subject rental property.

If the repair work is not completed by January 31, 2019, I find that pursuant to section 65 of the *Act*, the tenant is entitled to receive a rent reduction in the amount of \$350.00 per month effective February 1, 2019 until the repairs are completed. If the repairs are made part-way through the month, then rent will return to the monthly rate of \$1,150.00 the following month. For example, if the repairs are completed on February 15, 2019, rent for February would be \$800.00, due on the first day of the month and rent for March would be \$1,150.00, due on the first day of the month. I make no finding on the reduction in the value of the tenancy for the malfunctioning doors. The landlord is cautioned that the tenant may apply for monetary compensation for the reduction in the value of the tenancy due to the malfunctioning doors.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Conclusion

The One Month Notice is cancelled and of no force or effect.

The landlord is ordered to complete repairs to the rental unit as laid out above.

If the repair work is not completed by January 31, 2019, the tenant is granted a rent reduction in the amount of \$350.00 per month from February 1, 2019 until the repairs have been completed.

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: December 13, 2018

Residential Tenancy Branch