



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR DRI ERP FFT LRE MNDCT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant sought the following remedies:

1. an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice");
2. an order or finding regarding a disputed rent increase;
3. an order for emergency repairs;
4. an order suspending or restricting the landlord's right of entry; and,
5. compensation, including compensation for recovery of the filing fee.

A dispute resolution hearing was convened on December 21, 2018, and the landlord and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If the tenant is not entitled to an order cancelling the Notice, is the landlord entitled to an order of possession of the rental unit?
3. Is the tenant entitled to an order or finding regarding a disputed rent increase?
4. Is the tenant entitled to an order for emergency repairs?

5. Is the tenant entitled to an order suspending or restricting the landlord's right of entry?
6. Is the tenant entitled to compensation, including compensation for recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy commenced in October 2017, and that monthly rent is \$950.00 plus \$30.00 monthly for parking, for a total rent of \$980.00. The tenant paid a security deposit in the amount of \$475.00.

The landlord explained that the tenant has only paid full rent for the months of October, November, and December 2017, and that due to a roof leaking issue he reduced the tenant's rent by \$100.00 to \$880.00. The rent reduction was to remain in effect until the roof was repaired. Once the roof was fixed, then the rent would return to the full amount of \$980.00. The roof was eventually repaired several months later, at which point the tenant said that he wanted a continued rent reduction until a mice and cockroach issue was fixed.

The landlord testified that there was a problem with the roofers not covering their work on the roof, and then after a rainfall water got into the tenant's ceiling which resulted in a chunk of the ceiling falling onto the carpet below. It was "a piece of wet drywall . . . not a catastrophe." The landlord said that the building in which the rental unit is located was built in the mid-1960s by his estimation.

The landlord testified that the cockroach exterminators did not find any evidence of cockroaches which is why the rent would return to \$980.00 effective November 1, 2018. The tenant only pays \$880.00 and so the landlord issued the Notice on November 8, 2018 for unpaid rent in the amount of \$100.00.

The tenant testified that he observed a bulge in the ceiling when he first viewed the rental unit. As a professional structural engineer, he had serious concerns with the bulge, and asked the landlord if he could or would fix or repair it, to which the landlord said that he would. At the first rain, the ceiling leaked, and a piece fell off not far from where the tenant was sleeping (the rental unit is a bachelor suite). The situation became worse and worse, and he was unable to use the place, have furniture, or have company come over. Finally, the ceiling was fixed in August 2018.

The tenant testified that there was a mice issue, and while the pest control technicians never saw any mice (because they hide) there was mouse feces. The tenant met with the landlord and requested a continued rent reduction until the mice and cockroach issue was fixed. The tenant stated that there is still a mice and cockroach issue.

It was on the basis of the mice and cockroaches that the tenant applied for an order for emergency repairs. There was previously an issue with a plugged sink and toilet, which the tenant ultimately solved.

Regarding the tenant's claim for an order restricting or prohibiting the landlord's right to enter the rental unit, he explained that the landlord will just text him and then enter the rental unit without proper notice, and that when he does enter the rental unit the landlord does not remove his shoes.

Finally, in respect of the tenant's claim for compensation (in the amount of \$4,600.00), he testified that he is seeking this amount as it represents the rent he has paid for a place that he describes as essentially non-liveable and that he has not been able to use or enjoy the rental unit due to the various issues, with particularly an issue of mice as of late.

The landlord submitted on rebuttal that "I don't know how he can live there" based on the description that the tenant gave of the conditions. He further argued that the tenant is simply making excuses so that he does not have to pay the full rent.

The tenant submitted that this case is not about a few hundred dollars here or there but that it is about his rights as a tenant and about the obligations of the landlord.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Re Order Cancelling the Notice for Unpaid Rent

Section 26 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the

tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent.

In this case, the monthly rent is, as agreed by both parties, \$980.00 (comprised of \$950.00 and an additional \$30.00 for parking). Based on the testimony of the parties, the landlord agreed to reduce the rent by \$100.00 for several months due to issues with the roof and then for issues with cockroaches and mice. While the landlord testified that the cockroach issue appears to have been solved (and that the documentary evidence from the extermination company indicates there are no cockroaches), the landlord did not dispute the tenant's submissions regarding the ongoing mice issue.

As such, in the absence of evidence to the contrary, the rent reduction of \$100.00 offered by the landlord and accepted by the tenant remained in effect on November 1, 2018. Therefore, I hereby order that the Notice issued on November 8, 2018, is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

I note, however, that the terms or details on when the mice issue would be determined to be solved do not appear in writing, and that neither party can be said to have provided a clear description or explanation as to what *would* constitute an end to the mice issue.

As such, I order that the rent reduction is to end on December 31, 2018, and that the rent shall return to the full amount of \$980.00 (that is, \$950.00 for rent and \$30.00 for parking) effective January 1, 2019.

Should the parties wish to negotiate further rent reductions after January 1, 2019, they must do so in accordance with section 27 of the Act. Or, the parties must enter into a written agreement that stipulates the precise factors and criteria by which an issue for which rent is being reduced is resolved.

Re Dispute of Rent Increase

With respect to the submissions of the tenant, the rent "increase" is not an increase as defined in the Act. It is, rather, a return to the unreduced amount of rent due. However, I have addressed this issue in the above-noted section regarding the Notice.

Re Order for Emergency Repairs

Section 33 of the Act deals with emergency repairs. I shall cite section 33(1) in its entirety for the benefit of the parties:

33(1) In this section, "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.

In this case, the issues of cockroaches and/or rodents in the rental unit do not fall under the limited scope of section 33 of the Act. As such, I dismiss this aspect of the tenant's application without leave to reapply.

While the blocked sink and toilet may have fallen under section 33(1)(c)(ii) of the Act, as the tenant testified that he has since fixed this issue, I need not consider it further.

Re Order Suspending Landlord's Right of Entry

Based on the testimony of the tenant, the landlord texts him randomly and then shows up without notice and enters the rental unit. The landlord did not comment on or dispute this portion of the tenant's testimony.

Given the above, I order that the landlord must comply with section 29 of the Act in respect of entering the rental unit. I cannot, of course, order that the landlord remove his shoes upon entering the rental unit but would caution the landlord that the landlord may

be liable should mud or dirt or whatever else may be on the landlord's shoes damage the tenant's personal property.

Re Compensation for Loss of Enjoyment

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

In this case, the landlord agreed that the leaking ceiling and then the cockroach and mice problems caused an inconvenience to the tenant. The parties agreed to a rent reduction in the amount of \$100.00 for that inconvenience. The tenant accepted that rent reduction for the inconvenience and did so since January 2018. The tenant now claims compensation in the amount of \$4,600.00 comprising of rent for all the months that he has lost his right to enjoyment of the rental unit.

While he may have very well been inconvenienced—and I do not doubt that it has been a less-than-agreeable living arrangement—the fact remains that the tenant continued to live in the rental unit since October 2017 notwithstanding all of the issues he has brought to my attention. Further, the tenant had no issue with the amount of the reduction in rent as time progressed, but only took issue with compensation when the landlord attempted to return the rent to the original amount. And, in effect, he took no steps to minimize his loss since January 2018 other than through the acceptance of a rent reduction.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim for compensation for loss of quiet enjoyment of the rental unit. He has, through the rent reductions over the past year, received reasonable and adequate compensation for any loss of quiet enjoyment.

As such, I dismiss this aspect of his claim.

Re Compensation for Recovery of the Filing Fee

I decline to award the tenant a monetary award for recovery of the filing fee.

Conclusion

I hereby order that the Notice issued on November 8, 2018, is cancelled and of no force or effect. The tenancy will continue until it ended in accordance with the Act.

The tenant's application in respect of the claim for compensation is dismissed without leave to reapply.

The tenant's application in respect of an order regarding the landlord's right to enter the rental unit, regarding the rent increase, and regarding the order for emergency repairs, is addressed in the above analysis.

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: December 21, 2018

Residential Tenancy Branch