



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP FFT OLC RP RR

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant 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 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served copies of the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenant confirmed receipt of the 1 Month Notice on October 24, 2018, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in May 2014. Rent is currently set at \$1,550.00 per month, and the tenant continues to reside at the rental address.

The landlord issued the 1 Month Notice on the following grounds:

1. The tenant or a person permitted on the property by the tenant has:
 - i) put the landlord's property at significant risk.

The landlord testified that on July 18, 2018 the tenant returned from vacation to discover that water had entered the basement, most likely through the back stairwell. The landlord called an onsite restoration company who attended the home. The landlord then discussed with the project manager about the restoration process, and the tenant was informed of the process as well. The landlord testified that he was not covered by his home insurance for the claim, and he was waiting for the tenant to remove his belongings in order for the restoration process to start. The landlord testified that the basement had 1 to 2 inches of water in half of the basement.

The landlord testified that the tenant failed to remove any of his belongings, preventing the landlord from continuing with the restoration. The landlord testified that he did not feel comfortable removing the tenant's belongings considering the past history of disputes between both parties. The landlord is concerned that the water has been causing damage to the home since July of 2018, and therefore issued the tenant a 1 Month Notice on October 24, 2018 to end the tenancy as the tenant posed a significant risk to his property by failing to remove his belongings so repairs could commence.

The tenant testified in the hearing that several homes were flooded last July in the same area due to the rain and flooding. The tenant testified that the landlord did not have insurance coverage. The tenant applied for reimbursement under his own insurance, which was denied. The tenant attempted to appeal the denial in September 2018. The tenant testified that the basement area of the home was damaged, but he was able to reside upstairs. The tenant testified that his son's bedroom was in the basement, as well as the play area.

The tenant testified in the hearing that he was unable to physically move his furniture himself, and was awaiting a decision on the appeal of his insurance claim. The tenant is disputing the 1 Month Notice as he feels he has not prevented the landlord from performing repairs to the home, and he has not put the landlord's property at risk. The tenant testified that he has never denied access to the landlord to perform repairs.

The tenant feels that the landlord has failed to maintain the home as required by the Act, and perform repairs. The tenant is requesting a monetary order in the amount of \$4,150.00 for the loss of use of the basement since July of 2018. The tenant is also requesting an order for the landlord to comply with the Act, and perform repairs.

Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant filed his application on November 2, 2018, 9 days after receiving the 1 Month Notice. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving he has cause to end the tenancy.

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 47 of the *Residential Tenancy Act* allows the landlord to end a tenancy for cause:

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...*

(d) the tenant or a person permitted on the residential property by the tenant has...

(iii) put the landlord's property at significant risk.

I have considered the concerns brought up by the landlord, as well as the testimony of the tenant. The burden is on the landlord to demonstrate how the tenant has significantly put the landlord's property at risk to the extent that this tenancy must end on that basis.

Although I sympathize with the landlord's concerns that the tenant has not acted with a sense of urgency in removing his belongings to assist with the restoration of the home, the landlord did not provide any witness testimony or reports to support that this tenant has put the landlord's property at significant risk. I find that the home was flooded, but not to the extent that this would be considered a frustrated tenancy as the tenant is still able to continue residing in the home. Furthermore, I accept the tenant's testimony that some of the delay was due to the process of

claiming through his insurance company. I find that the flood took place as a result of circumstances beyond the control of both parties, and not due to their deliberate or negligent actions.

For the reasons outlined above, I find that the landlord has not satisfied me that he had grounds for ending this tenancy on the grounds that the tenant has put the landlord's property at significant risk. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated October 24, 2018, and this tenancy is to continue until ended in accordance with the *Act*.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *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.

I have considered the testimony of both parties, and I am not satisfied that the tenant has provided sufficient evidence to support that the landlord has failed to fulfill their obligations as required by section 32 of the *Act* as stated above. I find that the delay with commencing repairs can be attributed to the actions of both parties, as well as external reasons beyond their control. On this basis, I dismiss the tenant's monetary claim without leave to reapply.

I order that the landlord perform repairs as required by section 32 of the *Act* as stated above. I also order that the tenant provide access in order for the landlord to perform the requested repairs.

As the filing fee is normally awarded to the successful party after a hearing, and the tenant was only partially successful in his claim, I allow the tenant to recover half of the filing fee. The tenant may choose to give effect to this monetary award by reducing a future monthly rent payment by \$50.00.

Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice, dated October 24, 2018, is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I dismiss the tenant's monetary application without leave to reapply.

I order that the landlord perform repairs and maintain the rental home as required by section 32 of the *Act*, and that the tenant provide access to the home and accomodate the requested repairs.

I issue a monetary award in the tenant's favour in the amount of \$50.00. I allow the tenant to implement this monetary award of \$100.00, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: January 9, 2019

Residential Tenancy Branch