



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, OLC, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “*Act*”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order for the Landlord to complete emergency repairs, for an Order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* and/or tenancy agreement and for the recovery of the filing fee paid for this application.

The Tenant and Landlord were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of the Landlord’s evidence package. Neither party brought up any concerns regarding service and therefore I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

As the Landlord confirmed the spelling of her name at the hearing, the Application for Dispute Resolution was amended to the correct spelling as stated by the Landlord. This amendment was made pursuant to Section 64(3)(c) of the *Act*.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Should the Landlord be ordered to comply with the *Residential Tenancy Act*, *Residential Tenancy Regulation* and/or tenancy agreement?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on October 15, 2018. Monthly rent is \$1,400.00 and a security deposit of \$700.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Landlord testified that on December 1, 2018 she served the Tenant with a One Month Notice by posting the notice on his door. The One Month Notice, dated November 30, 2018, was submitted into evidence and states the effective end of tenancy date as January 1, 2019. The reasons for ending the tenancy were stated on the One Month Notice as follows:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The Landlord provided further testimony that the Tenant has been smoking cannabis in the rental unit which is disturbing the other tenants. The Landlord noted that there are three rental units in the home; one unit upstairs and two downstairs which includes the Tenant's rental unit.

The Landlord submitted into evidence a letter from the upstairs tenant dated December 27, 2018. The letter states that the smell of cannabis smoke was noticed when the Tenant first moved in and has been ongoing since. The upstairs tenant notes that the smell is coming through the vents and that she is concerned for the safety and health of herself and her children.

A second letter, dated December 27, 2018, is from guests of the upstairs tenant. The letter states that on December 21, 2018 they saw cars in the driveway that they believed were connected to the Tenant who was having a party. They noted that they smelled cannabis smoke that evening as well as for a few days afterwards.

A third letter, which is undated, is from a babysitter of the upstairs tenant. The letter notes that the babysitter has been present in the home four times between November 5, 2018 and December 17, 2018 and has noticed the smell of cannabis through the vents.

An email dated January 3, 2019 was submitted into evidence by the Landlord. The email is from the neighbouring downstairs tenant and states that there have been multiple occasions when he has smelled cannabis smoke in his rental unit.

The Landlord stated that after she became aware of the issue from the other tenants, she had a phone conversation with the Tenant. Following this, she sent the Tenant a letter. The letter, dated November 19, 2018 was submitted into evidence and states that smoking is a breach of the tenancy agreement and that a second breach will result in a One Month Notice. The Landlord noted a clause in the tenancy agreement that states that there is no smoking on the property.

The Tenant provided testimony that he does not smoke cannabis in the rental unit and stated that he has seen one of the other tenants smoking cannabis on the rental property on a couple of occasions. He stated that the smell noticed by the other tenants is not coming from him or his rental unit. The Tenant also stated that if the smell was so strong in the upstairs unit and was coming from his rental unit, this would be impacting himself and his child.

The Tenant questioned whether the One Month Notice was served to him due to his request for repairs in the home. He also confirmed receipt of the letter from the Landlord dated November 19, 2018. The Tenant stated that during the phone call with the Landlord he advised her that he was not smoking in the rental unit or on the rental property.

The Tenant also noted that there has been a skunk on the property, which may have caused a smell on the rental property due to the skunk residing under the home. The Tenant submitted photos and a video of the skunk into evidence.

The Landlord responded that the smell reported to her by the other tenants was clearly cannabis and not connected to the smell of a skunk. The Landlord also stated that the Tenant told her that he was smoking in the rental unit and that he would stop. She stated that the Tenant never advised her that he had seen another tenant smoking cannabis on the rental property.

The Tenant also applied for an Order for emergency repairs to be completed. He also confirmed that his request for an Order for the Landlord to comply was in relation to his request for repairs.

The Tenant provided testimony that the top of the dishwasher does not work and has not been fixed despite his requests to the Landlord. The Tenant submitted photos of the dishwasher into evidence. He also noted that there were issues with the bathroom fan that he fixed himself.

The Tenant stated that he found a mouse in the rental unit and also noted his concern over black mould present in the rental unit. The Tenant testified that he has to wipe the window down everyday due to concerns over mould growth. A video was submitted into evidence of the Tenant wiping the window and showing black left on the paper towel.

The Tenant stated that he has notified the Landlord about the need for repairs in the rental unit through Facebook and by phone. The Tenant submitted into evidence multiple photos regarding his request for repairs.

The Landlord stated that she completes repairs when she is notified about the need for repairs and that she made arrangements for a contractor to come by to complete requested repairs in the Tenant's rental unit. However, she noted that the Tenant was to call to arrange a time with the contractor and never did so. She also stated that the Tenant has mentioned some of the repairs to her but stated that he minimized the issues and did not note that any of the repairs were urgent.

The Landlord stated that the Tenant told her the issue with the dishwasher was fine. The Landlord submitted into evidence email communication with the Tenant as well as emails with the contractor hired to do repairs. She also submitted into evidence invoices showing repairs completed on the home.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the notice was posted on the Tenant's door on December 1, 2018 and he applied for dispute resolution on December 7, 2018, I find that the Tenant applied within the timeframe provided by the *Act*. Therefore, the issue before me is whether the reasons for the notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Landlord stated two reasons for ending the tenancy on the One Month Notice. The first, pursuant to Section 47(1)(d)(i), that the Tenant has significantly interfered with or unreasonably disturbed others and the second, pursuant to Section 47(1)(h), that the Tenant has breached a material term of the tenancy agreement.

The Landlord provided testimony that both reasons were related to the Tenant smoking cannabis on the rental property, specifically within the rental unit. The Tenant testified that he does not smoke cannabis in the rental unit or on the rental property. When two parties to a dispute resolution proceeding present conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence to support their testimony.

While the Landlord submitted letters and emails from other the other tenants in the rental home, I do not find these documents to establish that the Tenant is smoking cannabis in his unit. Instead, I find that the documentation establishes that there is the smell of cannabis on the rental property.

The letter from the upstairs tenant, dated December 27, 2018, states that they can smell cannabis through their vents. A letter from guests of the upstairs tenant, dated December 27, 2018, states that they believe the Tenant was having a party and stated that they could smell cannabis through the vents.

A letter from the babysitter of the upstairs tenant stated that they have smelled cannabis through the vents and believe it to be coming from the Tenant's rental unit. An email from the neighbouring tenant, dated January 3, 2018 states that he has smelled cannabis in his rental unit.

While these letters and emails confirm that the residents on the rental property are smelling cannabis, they do not confirm that the cannabis smell is coming from the Tenant. As the Tenant stated that he is not smoking cannabis on the property, I do not find these statements from the other tenants to establish that he is.

The Tenant stated his belief that the neighbouring tenant was smoking cannabis, which could also be causing the smell through the vents, as could anyone else smoking on the property.

I find that the Landlord did not meet the burden of proof to establish that the Tenant is smoking cannabis in his rental unit or on the rental property. Therefore, I cannot determine that the Tenant is unreasonably or significantly interfering with or disturbing others, or that he breached a material term of the tenancy due to cannabis use on the property.

Accordingly, the One Month Notice dated November 30, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's claims for emergency repairs, I refer to Section 33(1) which provides a definition of emergency repairs as follows:

- 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.

The Tenant described repairs needed in the home, including an insulation issue with a window which causes concern for black mould, a problem with the dishwasher, and a mouse found inside the rental unit.

Based on the Tenant's testimony regarding the repairs needed, I do not find that any of the repairs mentioned fit the definition of emergency repairs under the *Act* as they are not urgent or necessary for health and safety or protection of the property. As such, I decline to issue any orders for emergency repairs.

The Tenant stated that his claim for an Order for the Landlord to comply with the *Act, Regulation* and/or tenancy agreement was regarding his request for repairs. I find evidence before me that the Landlord has taken reasonable steps to deal with the Tenant's request for regular repairs and as such, do not find it necessary to issue any orders. The Tenant's claim for emergency repairs and an Order to comply are dismissed, without leave to reapply.

As the Tenant was successful in his application to cancel the One Month Notice, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from his next monthly rent payment as recovery of this fee.

Conclusion

The One Month Notice dated November 30, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenant may deduct \$100.00 from the next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

The remainder of the Tenant's application is dismissed, without leave to reapply.

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 15, 2019

Residential Tenancy Branch