



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, LAT, LRE, OLC, RP, 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 authorization to change the locks, to suspend or restrict the Landlord’s right to enter, for an order for the Landlord to comply with the Act, *Residential Tenancy Regulation* and/or tenancy agreement, for an order for the Landlord to complete regular repairs, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The Tenant and two Landlords were present for the duration of the teleconference hearing. The Tenant confirmed receipt of the Landlord’s evidence package. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package but stated that they did not receive a copy of the Tenant’s evidence. The Tenant stated that his evidence was provided to the Landlord in person on December 29, 2018.

However, without further evidence to confirm service of the Tenant’s evidence package, I cannot determine that it was received by the Landlord who claimed that the Tenant did not provide a copy of his evidence. As such, the Tenant’s evidence is not accepted, and will not be considered as part of this decision.

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

Rule 2.3 of the *Rules of Procedure* states that claims on an Application for Dispute Resolution must be related to each other and that unrelated claims may be dismissed. Due to the urgent matter of a dispute over a One Month Notice and a claim for emergency repairs, the parties were informed that the hearing and decision would address only those claims. Accordingly, I exercise my discretion to dismiss the remainder of the Tenant's claims, with leave to reapply.

The Landlord submitted evidence to the Residential Tenancy Branch prior to the hearing and it was confirmed that a copy of the evidence was served to the Tenant. However, the evidence was submitted in an electronic format that was unable to be opened. As such, the Landlord was asked to re-submit the documentary evidence in another format. Following the hearing, the Landlord re-submitted their documentary evidence and it was able to be opened and read. Therefore, the documentary evidence of the Landlord has been accepted and considered as part of this decision.

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 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 1, 2018. Monthly rent in the amount of \$1,950.00 is due on the first day of each month. A security deposit of \$975.00 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 Landlords stated that a One Month Notice was served to the Tenant in person on November 26, 2018. The Tenant stated that he received the One Month Notice on November 26 or November 27, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Jeopardize a lawful right or interest of another occupant or the landlord

The Landlord provided further details on the One Month Notice as follows:

Nov. 12th threatened to assault me, pg 4

Nov. 14th threatened to treat me as a trespasser after giving 24h notice and allowing access the day prior to resolve same issues

Nov 26 threatened to come to my home as a form of intimidation

(Reproduced as written)

The Landlord stated that the majority of communication with the Tenant has been through text message which is how the threats and intimidation occurred. The Landlord stated that when talking about repairs needed in the rental unit, the Tenant stated that he did not want him to come over and called him a “lying dirtbag”. The Landlord stated the Tenant has also sent threatening text messages in which he calls the Landlord a liar and says that he knows where the Landlord lives.

The Landlord stated that he has never shown up at the rental unit unannounced, but instead will provide 24 hours notice and will arrange a time to attend the rental unit. The Landlord noted one time when he attended the rental unit after providing 24-hour notice and the Tenant threatened to call the police if he entered the home.

The Tenant stated that shortly after the tenancy began, he noticed fleas in the rental unit. As such he notified the Landlord who came by on November 1, 2018 to look at the issues. The Tenant stated that he was upset about the presence of fleas in the rental unit as well as animal urine that was found resulting in the need for the Tenant to

thoroughly clean the rental unit prior to unpacking and moving in. The Tenant stated that he was upset with the Landlord over the issue with the animal urine but was happy with how the Landlord dealt with this concern as the Landlord offered to cover \$200.00 of the security deposit for the Tenant to cover cleaning costs.

However, the Tenant stated that there were issues in dealing with the presence of fleas and that the Tenant was frustrated with how the Landlord was responding to their concerns. The Tenant stated that the Landlord called him numerous times and he had to tell the Landlord to stop calling. The Tenant agreed that in expressing his frustration over the issues he called the Landlord a name in a text message.

The Tenant also stated his frustration over the manner in which the Landlord attempts to enter the home when attending to address repairs. The Tenant stated that the Landlord will bang constantly on the door, despite the Tenant's request that the Landlord call him when he has arrived at the home. He stated that the incessant banging was causing his family to feel unsafe. The Tenant further stated that the Landlord has been verbally abusive towards his partner.

The Tenant stated that he did not threaten the Landlord when he told him he knows where he lives. The Tenant stated that he was going to deliver notice regarding his request for repairs at the Landlord's home as previous attempts to communicate his request for repairs had not been successful.

The Landlord testified that when he arrived at the home to talk to the Tenant about the flea issues, they got into an argument outside of the home. He stated that the Tenant was angry and threatened to call the police if he entered the home, which the Landlord said made it difficult to try to deal with the Tenant's concerns that were occurring inside of the rental unit.

The Landlord stated that the Tenant does not answer his calls, so he knocks on the door when arriving at the home. He further clarified that he does not show up unannounced but provides proper 24-hour notice to attend the rental unit.

The Landlord submitted copies of text message exchanges into evidence and noted a few that came across as threatening. This includes a text message on November 12, 2018 when the Tenant called the Landlord a name and stated, "you're lucky I didn't smash you when you said you'd kick my family out of the house".

The Landlord submitted into evidence a text message in which the Tenant stated that his children had infections and diseases from the fleas and threatened to sue the Landlord. The Landlord also referenced text messages in which the Tenant threatened to call the CRA, called the Landlord "dumb", used swear words towards the Landlord, told the Landlord he will be in "big trouble" if he does not come to the rental unit to complete repairs and called the Landlord various inappropriate names. The Landlord also stated that there have been times when the Tenant did not allow entry to the home and one time when the Tenant threatened to call the police if the Landlord entered.

The Landlord also submitted a text message exchange with the Tenant in which the Tenant had notified the Landlord regarding water entering the basement of the home. As it seems the Tenant was not happy with how the repairs were being dealt with, the Landlord stated that the Tenant responded by telling him to go ahead and evict them and stating that he knows where the Landlord lives. The Landlord also submitted a text message in which the Tenant stated that he would let the rental unit mould and rot if the Landlord did not deal with the water issues.

The Landlord stated that the Tenant has denied them entry into the rental unit at least three times and submitted into evidence copies of notices to enter the property as well as text message communication regarding the Landlord attempts to make arrangements to attend the rental unit.

Along with the application to cancel the One Month Notice, the Tenant has also applied for an order for the Landlord to complete emergency repairs. The Tenant testified that there are water issues in the basement of the rental unit. He stated that when it rains hard water comes through the wall and onto the floor and trim. He further stated that the water pools on the floor and requires them to soak it up with towels to prevent any further damage.

The Tenant stated that he advised the Landlord via text message of the issue with the water and also went to deliver written notice in person, but the Landlord was not home, so it was sent by email instead. The Tenant stated that the Landlord came to clear the gutters at the front of the home, but as the contents of the gutters was left on the driveway, it ran back into the gutters and did not solve the issue.

The Landlord testified that he received a list of repair requests from the Tenant and went to the rental unit on December 29, 2018 to repair the issues. He stated that everything on the list was accomplished and he sent written confirmation of the repairs to the Tenant although he has not yet received a response to indicate whether any

issues are still present after the repairs. Therefore, the Landlord was unaware that the water leaking issues are still occurring. The Landlord submitted the list of repair requests and the list of work completed into evidence.

The Landlord stated that he diverted the gutter away from the drain tile to prevent the drainage system from being overwhelmed and also cleaned the gutters in an effort to resolve the issue with the water leaking into the basement.

Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant stated that he received the One Month Notice on November 26 or November 27, 2018 and he filed an Application for Dispute Resolution on December 6, 2018, I find that the Tenant applied within the timeframe provided by the *Act*. As such, the matter before me is whether the reasons for the One Month Notice are valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a One Month Notice, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The Landlord submitted evidence of multiple text message conversations in which the Tenant called the Landlord names, threatened to sue the Landlord and used inappropriate language. The Landlord also noted that the Tenant was not allowing access to the rental unit and threatened to call the police should the Landlord enter the property.

Due to communication between the parties, the Landlord served the Tenant with a One Month Notice pursuant to Sections 47(1)(d)(i), 47(1)(d)(ii) and 47(1)(e)(iii), stating that the Tenant has significantly interfered with or unreasonably disturbed the landlord and has engaged in illegal activity that has jeopardized the lawful right or interest of the landlord.

The Tenant admitted to conflict between the parties. It seems that poor communication began shortly after the tenancy started when the Tenant became frustrated over the condition of the rental unit when moving in. The Tenant was in agreement that he called the Landlord an inappropriate name during the time they were dealing with the presence of fleas in the rental unit.

Upon review of the Landlord's evidence and the testimony of both parties regarding the conflict, I do find that the Tenant has been inappropriate in his communication with the Landlord and it seems clear that there is an ongoing conflict between the parties.

I find that the text message dated November 12, 2018, in which the Tenant stated the Landlord was lucky he didn't "smash" him to be rude and aggressive. I also find evidence before me of challenges with the completion of repairs due to the Tenant's specific requests for when and how the Landlord may enter the rental unit.

I do find that the text message communication from the Tenant has a threatening and inappropriate tone, specifically the text message communication that occurred in November 2018. However, I do not find evidence that the Tenant threatened the Landlord in such a manner that the Landlord was worried for his safety and therefore involved the police. I also find evidence that the conflict and communication became escalated from both parties and that both parties may have played a role in the communication breakdown.

According, I am not satisfied that the issues that have occurred between the parties reach the level of significant interference or unreasonable disturbance of the Landlord or that the Tenant's behaviour has seriously jeopardized the health or safety or lawful right of the Landlord. I also fail to find evidence that the Tenant has engaged in illegal activity that has jeopardized the lawful right or interest of the Landlord, as stated on the One Month Notice.

While the Landlord also claimed that the Tenant was not allowing access to the rental unit to complete necessary repairs, the One Month Notice does not state that the tenancy was ended due to a risk to the residential property, pursuant to Section 47(1)(d)(iii). Therefore, I do not find this to be a valid reason for ending the tenancy.

As such, I am not satisfied that the Landlord established that the reasons for the One Month Notice are valid and therefore the One Month Notice dated November 26, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

However, I caution the Tenant that he should consider himself sufficiently warned that his communication with the Landlord is not appropriate and any further name calling, inappropriate language or communication that may be seen as rude or threatening may be sufficient reason for the Landlord to find cause to end the tenancy. Should this occur, the Landlord may use this decision as evidence that the Tenant was warned that any

further inappropriate actions may lead to the Landlord's justification in ending the tenancy.

I also remind the parties that the Landlord has a right to enter the rental unit with notice provided in accordance with Section 29 of the *Act*. If the Landlord provides notice to enter the rental unit in accordance with the *Act*, the Tenant must not unreasonably restrict access, particularly if the access is regarding repairs requested by the Tenant or if needed for the protection of the residential property.

Regarding the Tenant's claim for emergency repairs, I refer to Section 33 of the *Act* which provides a definition for 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.

Based on the testimony of both parties regarding the water issues on the lower level of the rental unit, I do not find that this meets the definition of emergency repairs as outlined in Section 33 of the *Act*. I also accept the testimony of the Landlord that reasonable steps have been taken to try to resolve the issue and that he was not aware that the issue is still occurring. As such, I do not find that any orders are needed for the Landlord to complete emergency repairs and dismiss the Tenant's claim for an emergency repair order, without leave to reapply.

The Tenant has requested the recovery of the filing fee paid for the Application for Dispute Resolution, however I decline to award the recovery of the filing fee.

Conclusion

The One Month Notice dated November 26, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's claim for emergency repairs 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 23, 2019

Residential Tenancy Branch