



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partnership
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, OPC, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on April 1, 2019 for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62.

The Landlord applied on April 12, 2019 for:

1. An Order of Possession - Section 55;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid for the stated reasons?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to an order for the Landlord’s compliance?

Is the Tenant responsible for repairs to a broken window or any agreement to pay for repairs to the window?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on June 1, 2018. Rent of \$1,250.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit. On March 27, 2019 the Landlord served the Tenant with a one month notice to end tenancy for cause (the "Notice") by putting the Notice on the Tenant's door. The Notice sets out two reasons for ending the tenancy: the tenancy or a person permitted on the property by the Tenants caused extraordinary damage to the unit/site or property/park; and breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The details set out in the Notice indicate that the Tenant's guest threw a rock that shattered a window, that the Tenant agreed to pay for the repair invoice and that the Tenant has not paid for the repairs.

The Landlord states that they gave the Tenant a letter dated February 22, 2019. The Landlord agrees that there is no mention of the breach of any material term and that as the letter sets out that the Tenant did not pay by February 28, 2019 as agreed that the letter implies that it had until February 28, 2019 to pay \$224.13. It is noted that the letter sets out the following "This is a reminder and a final notice of collection." The Landlord states that they did not provide a specific letter on the breach of a material term.

The Landlord states that a guest of the Tenant caused damage to a window by throwing a rock at the window causing the window to break. The Landlord states that damage is extraordinary because it needed repair. The Landlord states that it has no answer for how the damage is extraordinary. The Tenant disputes that the damage was extraordinary and states that it was repaired the following day by the Landlord.

The Landlord claims compensation of \$224.13 for damage to the window that occurred on September 27, 2018. The Landlord states that on the same day the Tenant verbally

agreed with the Landlord that the Tenant's guest broke the window. The Landlord states that the total cost of repairs was \$474.13 and that the Tenant has paid \$250.00 to date. The Landlord provides an invoice for the total costs and has no evidence of having any other quotes for the repair. The Landlord states that it is unknown whether they have insurance for this type of damage.

The Tenant states that as the front access buzzer to the building was not working and as his unit is beside the front door, other tenants would frequently ask the Tenant to let them in and the Tenant would throw them his keys. The Tenant states that he does not know who broke the window as when he looked out nobody was there. The Tenant states that he agreed to pay for the repairs even though he did not know who broke the window because the damage was at his unit. The Tenant states that the window is a 35 years old single pane window. The Tenant states that he has his own insurance however he was told that his insurance would not cover damage to the exterior of his unit. The Tenant states that he believes that the Landlord would have insurance for the building. The Tenant states that he is on a pension and could not afford to pay the full amount and that the Tenant offered to make payments of \$50.00 per month. The Tenant states that the Landlord did not give the Tenant the opportunity to source out its own quotes for the repair.

The Tenant states that the order for compliance being sought was in relation to a non-working entry buzzer that has since been repaired.

Analysis

Section 47(1)(f) and (h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if:

- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property; or
- the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the Tenant's undisputed evidence I find that the window in question was at least 35 years old. Given that the only damage was to one aged window that was repaired within a day and as the Landlord provided no other evidence of how this damage was extraordinary or evidence of additional damage that was extraordinary I find that the Landlord has not substantiated that the damage was extraordinary. I find therefore that the Notice is not valid for this stated reason.

Policy Guideline #8 "Unconscionable and Material Terms" sets out that to end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

The details of the Notice does not set out what material term was breach and does not even indicate what term of the tenancy agreement was breached. Although the Landlord relies on the letter dated February 22, 2019 as evidence of a written request for the Tenant to correct a breach of a material term, given the details of the letter with no mention of any material term being breached I find that this letter is merely a collection letter for the enforcement of an agreement from the Tenant to pay the repair costs of the broken window. For these reasons I find that the Landlord has not substantiated that the second stated reason for the Notice is valid. As neither reason stated on the Notice has been substantiated, I find that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues and the Landlord's claim for an order of possession is dismissed.

Based on the Tenant's evidence that the buzzer has been repaired and that the Tenant no longer requires an order for the Landlord's compliance I dismiss this claim of the Tenant.

Section 32(3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The Residential Tenancy Branch (the "RTB") Policy Guideline #40 "Useful Life of Building Elements" sets out that the useful life of windows is 15 years. Further it provides that the age of the item at the time of the replacement and the useful life of the item may be considered when calculating the tenant's responsibility for the cost or replacement of that item.

Based on the undisputed evidence that the window was 35 years old I find that the window no longer had any useful life or value when it was broken. As a result I find that the Tenant is not responsible for any costs to replace the window and I dismiss the Landlord's claim for the repair costs. As the Landlord has not been successful with its claims I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act. As the Tenant is not responsible for any repair costs to the aged window I find that the verbal agreement that the Landlord relies upon for the Tenant's obligation to pay for the repair is unconscionable in the circumstances and therefore unenforceable. As the Tenant has paid \$250.00 towards that repair pursuant to an unconscionable agreement I find that the Tenant is entitled to recovery of these monies and I order the Tenant to deduct **\$250.00** from future rent payable.

Conclusion

The Landlord's application is dismissed.

The Notice is not valid for the stated reasons and is cancelled.

I order the Tenant to deduct \$250.00 from future rent payable.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: May 16, 2019

Residential Tenancy Branch