



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, ERP, OLC, PSF

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 19, 2019
- b. An order for emergency repairs
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order that the landlord provide services and facilities required by the tenancy agreement or by law

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on May 19, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on May 24, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated May 19, 2019?
- b. Whether the tenant is entitled to an order that the landlord order for emergency repairs?
- c. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and/or tenancy agreement.

- d. Whether the tenant is entitled to an order that the landlord provide services and facilities required by the tenancy agreement or by law

Background and Evidence:

The parties entered into a written tenancy agreement that provided that the tenancy would commence on February 1, 2019 and continue on a month to month basis. The rent was \$1100 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$550 at the start of the tenancy.

The tenancy agreement included the following relevant terms:

“7. No appliances or utilities will be included in the rent other than those following: Stove, Fridge, Hot Water, Gas Fired Boiler Heat, Water and Sewer”

The Addendum included:

“16. Please let us know if you notice any water leaking or if anything needs repairs and we will gladly make the necessary repairs.”

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

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

The landlords gave the following relevant evidence:

- The tenant failed to advise the landlord of a significant leak after knowing about it for 3 days. The landlord was only advised of the problem when one of the landlords was delivering a notice relating to another matter. She immediately phoned her husband who attended shortly thereafter and shut off the water to the pipe that was leaking.
- The landlord hired a plumber who attended the next day. The plumbing under the bathroom sink was replaced thereby stopping the leak. The plumber provided the landlord with an opinion that the plumbing in this area was not defective and that in all likelihood it was tampered with.

- The landlord attended over the next several days with dehumidifiers etc. to deal with the water damage caused by the tenant's failure to turn off the water or advise the landlord of the leak.
- The landlord expects it will cost about \$1000 to fix the damage as he is doing it on his own. It would cost between \$3000 and \$4000 if he allowed his insurance to deal with the matter.
- The tenancy agreement does not provide that washing facilities are included with the rent. The landlords permitted the tenants to use their washer and dryer. However, they failed to use it properly. The tenant permitted her boyfriend to wash his heavy work clothes in it. It was operated in an unbalanced condition and was broken as a result.
- The landlord LF testified she was at the rental unit on May 16, 2019 to deliver a notice relating to another matter and discovered the leak in the kitchen.
- The tenant's boyfriend is living in the rental unit without the permission of the landlord.
- The landlord testified he is very concerned the tenant's boyfriend might damage the rental property.
- On one occasion he attended the rental unit to discover the tenant's boyfriend had removed the dishwasher. He told him he had no right to do this and that this action might cause further damage. When he returned at a later the dishwasher had been put back into its original place.
- We have been landlords for a long time and carefully go over the responsibilities of the tenant with them including their obligation to contact us if there is a leak problem.

The tenant gave the following evidence:

- She noticed some moisture on the floor in the kitchen 3 days before the landlord attended. It was not serious. They attempted to find the source of the problem but were unable to locate it. She assumed that it was caused by water being inadvertently spilled from the sink.
- The moisture increased over the next couple of days but she was unable to locate the problem. It did not appear to be that serious.
- The landlord discovered the problem was with the plumbing of the sink in the bathroom
- She was told by the landlord that she would be without a toilet for a day. She has tenant's insurance but determined it was not necessary to get her insurer involved.
- The landlord has not yet completed the repairs to the rental unit.

- The landlord improperly used a hair dryer when trying to dry out the rental unit.
- The landlord removed the washer and dryer without notice. It was there when she moved in.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to present sufficient evidence to end the tenancy based on the grounds set out in the Notice to End Tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy based on a balance of probabilities. An arbitrator is asked to consider whether there are grounds to end the tenancy as of the date of the Notice to End Tenancy. Subsequent unrelated conduct is not relevant to this determination although it may be grounds for a new Notice to End Tenancy.
- The only ground set out in the Notice to End Tenancy is that the tenant or person permitted on the property has put the landlord's property at significant risk.
- I accept the evidence of the tenant that when she first noticed water on the floor it did not appear to be significant. She looked to see if there was a leak and was not able to find it. It would not be unreasonable for a tenant who was not able to find the leak to assume the water might have inadvertently got onto the floor.
- The cause of the leak was found to be in a different room (the bathroom) from where the water on the floor was first discovered.
- The landlord alleged but failed to prove that the plumbing in the bathroom was tampered with. The plumber wrote a letter but failed to attend the hearing in person. I was not possible for the tenant to cross examine him to test the validity of this allegation.
- The landlord failed to suggest a motive why the tenant might want to tamper the plumbing.
- The tenant has tenant's insurance.
- The landlord alleged but failed to provide sufficient evidence to establish that the tenant or person permitted on the property by the tenant would intentionally damage the rental property.

In summary I determined the landlord failed to establish sufficient grounds to end the tenancy. I ordered that the Notice to End Tenancy dated May 19, 2019 be cancelled.

The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant's application for an order for emergency repairs. The landlord has promptly dealt with the problem and an emergency no longer exists.

I dismissed the tenant's claim for an order that the landlord comply with the Act, Regulations and/or tenancy agreement and for an order that the landlord provide services and facilities required by the tenancy agreement or by law. The tenant asked for an order that the landlord provide a washer and dryer. The tenancy agreement does not require the landlord to provide this. The landlords initially provided the washer and dryer out of kindness to the tenant. However, the landlords' kindness does not convert this to a legal obligation.

Conclusion:

I ordered that the Notice to End Tenancy dated May 19, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's claim for emergency repairs, for an order that the landlord comply with the Act, Regulations and/or tenancy agreement and for an order that the landlord provide services and facilities required by the tenancy agreement or by law.

This decision is final and binding on the parties.

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: July 10, 2019

Residential Tenancy Branch