



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LEPIK CONSTRUCTION LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, OLC, RP, MNDCT

Introduction

The tenant applies to dispute a one month Notice to End Tenancy for cause dated and received June 27, 2019. He also seeks an order that the landlord comply with the law or the tenancy agreement, that the landlord conduct repairs and that the landlord pay him money due to the unliveable condition of the apartment and due to the bullying and intimidation he has received at the hands of the landlord's representative(s).

The Notice in question alleges that the tenant or someone he's permitted on the property has put the landlord's property at significant risk. That claim, if proven, is a permissible ground for ending a tenancy under s. 47 of the *Residential Tenancy Act*.

As stated at hearing, the Rules of Procedure, Rule 2.3 directs that an applicant is not to bring unrelated claims under a single application. This matter was given a priority date for hearing as it dealt with the validity of a Notice to End Tenancy. The other matters raised in the tenant's application are unrelated in my view and I dismiss them with leave for the tenant to re-apply. The decision regarding the validity of the Notice in question may also serve to resolve some or all of the other issues.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the tenant or someone he's permitted on the property put the landlord's property at significant risk?

Background and Evidence

The rental unit is a one bedroom apartment on the eleventh floor of a 21 floor apartment building. This tenancy started in April 2015. The rent is currently \$1191.00 per month. The landlord holds a \$540.00 security deposit.

The central issue is the question of very high humidity in the tenant's bathroom. The landlord has completed the "Details of Cause" portion of the Notice by referring to eight pages of material to indicated that the tenant is using his bathroom tub and/or shower in such a manner or with such frequency as to emit an extraordinary amount of steam and that he is failing to wipe up the excess moisture or use the installed bathroom fan to properly disperse the humidity. The humidity, it is alleged, is causing mould to form in the bathroom and is destroying the drywall of the walls, the caulking between tiles as well as the ceiling of the hallway outside the bathroom.

The landlord's representative Ms. N. refers to documents predating this tenancy and testifies that prior to this tenant there was no problem with humidity in this bathroom. Indeed, she says, all the bathrooms in the building are the same in that they do not have windows but only a fan to the exterior to expel humid air. She says no other unit in this building has experience humidity damage like the rental unit is question.

In February 2016 the landlord issued the tenant a "Breach Notice" concerning the humidity in his bathroom and mould on the walls and ceiling. The tenant was directed to clean the mould in the bathroom and bleach the grout between tiles. He was instructed to use the bathroom fan while taking showers and after finishing and to keep the bathroom door open in between times to promote ventilation. The notice warned the tenant that failure to comply would lead to a notice to terminate the tenancy.

In May 2017 the tenant's rental unit was inspected by the landlord. The tenant was again directed to clean up the mould. Shortly after, the landlord's workmen repainted the bathroom and an automatic humidistat was installed. That humidistat, when operating, would power the fan until the humidity in the room fell below a level set by hand at the humidistat.

In February 2018 the tenant received another "Breach "Notice." He had claimed the bathroom fan was not working. The landlord's records indicate the fan and the humidistat were tested and found to be working properly. Mould was discovered to be present in the bathroom, the door frame, walls and ceiling. According to the landlord's records the tenant was cautioned that a continuous state of moisture and humidity would not only promote mould growth within the bathroom but would eventually crack paint and grout surfaces to cause irreparable damage to the drywall or wood beneath.

The notice warned the tenant that failure to comply would result in a one month notice to end the tenancy.

In early June of this year the apartment building suffered a significant fire on its 15th floor. A private restoration company was hired to inspect rental units in the building for possible water, smoke or fire damage. Mr. D.B., an employee of the restoration company, inspected this rental unit on June 7.

Mr. D.B. testified that he had thirteen years experience as a project manager of buildings and long experience with mould. His group has approximately 250 remediation jobs per year.

On entering this rental unit he observed ceiling damage in the entry hallway in front of the bathroom. The textured ceiling had been damaged and some had fallen away. It was old damage; there was no debris. He inspected the bathroom and observed "significant mould" on all walls. Mould was growing under paint. It was discolouring the paint. He observed flaking above the bathroom doorway and under the light switch.

Mr. D.B. says he knew what the damage was right away and that he had seen it many times. It was a result of very high humidity in the bathroom. He checked the bathroom fan and it was working. The humidistat was working as well.

He says he had inspected about 35 units in the apartment building and none had evidence of similar damage.

Dehumidifiers were installed. He discussed mould remediation with the landlord recommending a complete gutting out of all drywall in the bathroom, the surround and the toilet. No fire remediation was required. The mould remediation is presently on hold he says.

Mr. D.B. revisited the rental unit in late July to evaluate "life safety." Particularly, sometimes drywall mud and spackle contain asbestos fibres and while intact the asbestos poses no risk to humans if it is disturbed, for example by removal, precautions must be taken. He determined there was no asbestos concern. He also determined that there was no health concern with the mould in the bathroom.

The landlord has had the bathroom fan tested by a separate organization and it was determined the fan was functioning adequately.

The tenant testifies that the humidity problem in his rental unit has existed since 2015 and the landlord knew it. He says it goes back years.

He thinks the landlord's agents are manipulative. He suspects the landlord is attempting a "renoviction," an eviction under the guise of a renovation requiring vacant possession.

The tenant says the landlord inspected the rental unit in January of this year and there were no mould issues and no damage in the hallway. He says he is not taking long showers anymore because it's too mouldy.

The tenant has retained his own mould inspection company. Its report indicated that at its inspection there was 99% humidity on the tiles of the bathroom and that the North East wall of the bathroom had high humidity beneath the tiles, in the drywall.

In response the Ms. E.N. for the landlord opines that the moisture in the wall under the tiles is not coming from an outside source but is water finding its way under the tiles through grout that has been damaged and cracked by the high humidity.

Analysis

There was reference to breach and caution notices to the tenant regarding smoking. This Notice to End Tenancy was not given for grounds related to smoking and so I determine that evidence to be irrelevant.

Bathroom Damage

I have given significant thought to the competing remediation/humidity reports and find I prefer the report submitted by Mr. D.B. for the landlord. He attended the hearing, testified about his experience and about the report and was questioned about his report in a convincing and straightforward manner.

The tenant's report notes that there was water behind the shower wall. Such a finding could infer that the water in the bathroom was not coming or was not all coming from the tenant's use of it but from another source outside the bathroom. However, I accept Ms. E.N.'s evidence that there is no history of such bathroom moisture in any other of the apartments nor in this apartment before the tenant took occupancy. I accept her explanation as most likely that the water behind the tile wall in the bathroom is coming from shower water running through the damaged or missing grout between tiles.

It is also important in my view that the tenant's report does not appear to mention the significant ceiling damage to the ceiling just outside the bathroom door. The photo of the damage is a strong persuader that the condensation level in the bathroom is so extreme at times that it lowers enough to exit the bathroom door, rise and condense on the hallway ceiling, causing the ceiling material to flake and fall. That condensation comes from the extended use of the shower in the bathroom and a failure to wipe up condensation and use the fan afterwards.

The tenant has been given at least two official warnings about the excess condensation. The evidence shows that he has done little if anything to change his habits about keeping his

bathroom mould and mildew free and at a reasonable humidity. I am satisfied that he has put the landlord's property at significant risk and, in fact, significant damage has resulted. The drywall in the bathroom now requires removal and replacement and the ceiling in the hallway will require repainting.

I find that the Notice to End Tenancy received June 27, 2019 is a valid Notice and has resulted in the ending of this tenancy on its effective date: July 31, 2019. The tenant has not paid occupation rent for any period after July 31 and so the landlord will have an immediate order of possession.

Conclusion

The tenant's application is dismissed. The landlord will have an order of possession.

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: September 09, 2019

Residential Tenancy Branch