



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT, MNDCT, MNRT, RP

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 June 28, 2019 and setting the end of tenancy for July 31, 2019?
- b. An order for a monetary order in the sum of \$10,829.54
- c. A repair order
- d. An order for the reduction of rent for repairs, services, or facilities agreed upon but not provided
- e. An order to recover the cost of the filing fee?

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 personally served on the Tenant on June 28, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on July 13, 2019. With respect to each of the applicant's claims I find as follows:

Preliminary Matters

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Additionally, hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I find that this claim is not sufficiently related to the Tenant's monetary claim and claim for a repair order. Accordingly I exercised my discretion and dismiss the Tenant's monetary claim, the claim for the abatement of rent, and a repair order with leave to reapply.

Issues to be Decided in This Hearing

The issues to be decided are as follows:

- a. Whether the tenants are entitled to an order cancelling a one month Notice to End Tenancy dated June 28, 2019?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would commence on October 1, 2016 and end on September 30, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$4100 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$2050 at the start of the tenancy. The parties have entered into subsequent fixed term tenancy. The present rent is \$4250 per month payable in advance on the first day of each month.

Unfortunately the tenancy relationship between the parties has deteriorated with both parties mistrustful of the other.

The rental unit is 75 years old.

Briefly, the landlord gave the following evidence relevant to the validity of the one month Notice to End Tenancy:

- On March 11, 2018 the basement experienced a flood. The landlord contacted her insurer and restoration work was done. The restoration work was not finally completed until April 2019.
- The landlord testified the tenant lied to the contractor and the agents of the insurance company stating that the problems with the bathroom sliding door and the sliding door to the laundry room were pre-existing and were not caused by

the flood. As a result the insurance company would not pay to fix the doors and the restoration company would not pay to fix it unless the landlord paid. The landlord subsequently hired a contractor to fix the doors. The landlord failed to present invoices and receipts as to the cost but she testified it cost about \$100.

- The landlord testified the first time the tenant complained that the doors were not working properly was in an e-mail dated December 6, 2018. She submits this is evidence that no problems existed prior to that time.
- The landlord further testified that the tenants tampered with the bottom portion of the doors by removing the bottom guide component which caused them not to work properly.
- The landlord acknowledged that the amount of money to have these doors fixed was not that much. However, it is a symptom of how the tenants are behaving towards her. They are intending to make problems for the landlord. There have been many incidents in the past. The house is 70 years old and the landlord is doing the best she can to make the rental unit liveable.

The tenants gave the following evidence and submissions:

- They deny that they lied to the restoration and insurance company.
- The pocket doors have not worked properly since they moved into the rental unit in 2016. On many occasions they have found themselves trapped in the bathroom.
- They encourage their guests who might be using the bathroom to leave the door open so that they do not find themselves locked in.
- The problem is with the upper track which has nothing to do with the area that was flooded.
- The landlord had the pocket doors fixed at the end of June 2019. It worked for a period of time but they are now experiencing problems with it.
- They do not care whether the insurance company or the landlord fixes the problem. However, it is a maintenance problem which needs to be fixed.
- The landlord is extremely abusive towards them calling them liars in front of contractors and friends. This has caused considerable stress.
- A cleaner of the landlord got locked in sometime in March 2019 and she had to text the landlord to deal with the doors so that she could get out.
- The tenants referred to an email from the contractor to the landlord dated June 26, 2019 refusing to do the work unless the landlord pays them and stating the tenant told them it was a pre-existing condition and this was confirmed by his contractors of 18 years.

- They refer to another e-mail from the contractor to the landlord dated June 24, 2019 stating “As mentioned before your track holding the doors above are worn out. You need to have that changed in order for the doors to slide smoothly. It is from wear and tear from many years of use. .
- They deny they tampered with the sliding doors. There is no reason for them to do such an act.
- They further submit that landlord failed to present evidence that the tenants have “engaged in an illegal activity” as required by the grounds relied on by the landlord.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- 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 Details of Cause state “Tenant jeopardize a lawful right of the landlord: Tenant (G) repeatedly lied between June 22, 2019 and June 23, 2019 which result in landlord losing her right of repair from ServiceMaster Restoration company. (Attached 8 pages of details)

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to present evidence to establish sufficient cause to end the tenancy on a balance of probabilities based on the grounds set out in the Notice to End Tenancy which the landlord has served on the Tenants.
- The landlord failed to present sufficient evidence to prove that the Tenants lied to the insurance company and contractors. I am satisfied based on the evidence presented that a problem existed with the sliding doors that pre-existed the flood based on the following:
 - I accept the testimony of the Tenants that the problem existed.,
 - The e-mails from the contractor indicate that in their view this problem pre-existed and is caused by reasonable wear and tear.
 - I landlord acknowledged the rental property is 75 years old and there are maintenance issues which the landlord is doing her best to deal with.

- The landlord failed to present sufficient evidence that the problem was caused by the flood. I accept the evidence of the tenant which is confirmed by e-mails from the contractor that the problem is with the upper tracking which is not related to the flood.
- The landlord failed to provide evidence from a contractor or professional that the problems were caused by the flood.
- The landlord failed to prove the tenants tampered with the doors.
- Further, the landlord failed to provide sufficient evidence to prove that the Tenants were “engaged in and illegal activity” that has caused or is likely jeopardize a lawful right or interest of another occupant or the landlord as required by the grounds relied on by the landlord.

Conclusion:

As a result I ordered that the one month Notice to End Tenancy dated June 28, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenants have been successful with this application I order that the landlord reimburse the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

This decision is final and binding on both 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: September 06, 2019

Residential Tenancy Branch