



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (Notice), an order requiring the landlord to comply with the Act, the written tenancy agreement, or Residential Tenancy Regulations, and for recovery of the filing fee paid for this application.

The tenant, her daughter/representative/translator (TRL), another daughter/witness, their legal counsel and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary, digital, and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-

TRL, who provided the oral submissions on behalf of the tenant, submitted that they did not receive the landlord's evidence until December 24, 2019, and asked that his evidence be excluded.

I determined that the tenant would be able to provide their oral submissions in response to the landlord's evidence and I allowed that evidence to be included.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Notice and to an order requiring the landlord to comply with the Act, the written tenancy agreement, or Residential Tenancy Regulations?

Is the tenant entitled to recovery of her filing fee?

Background and Evidence

The undisputed evidence is that this tenancy began on July 16, 2015, that the beginning monthly rent was \$1,600.00, and that the current monthly rent is \$1,742.50.

I also heard oral evidence and viewed documentary evidence that showed the parties signed new tenancy agreements in each subsequent year in July for a fixed term until the following July. It is noted that the tenancy agreements provide that at the end of the fixed term, the tenancy continues on a month to month basis.

I additionally reviewed evidence which shows the parties signed condition inspection reports (CIR) each year.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants the Notice. The landlord said the Notice was served to the tenant by placing the document in the tenant's mailbox on October 27, 2019, and listed an effective end of tenancy of move-out date of December 15, 2019.

The reason stated for the Notice to end tenancy was that:

- the tenant has allowed an unreasonable number of occupants in the rental unit.

The tenant submitted a copy of the Notice.

In support of his Notice, the landlord submitted on the Notice that there are at least 3 other adults residing in the rental unit, which is an unreasonable amount.

The landlord submitted further on the Notice that four adults living in an 800 sq. ft., 2-bedroom apartment caused accelerated wear and tear of appliances, fixtures, carpets, etc.

The landlord alleged on the Notice that the living room was used for storage and that several appliances had to be repaired or replaced on a constant basis.

At the hearing, the landlord submitted sufficient evidence that the Rule of Thumb for landlords seems to be two occupants per bedroom and that the suite is designed for 2 adults and a child.

The landlord confirmed that he knew that there were always three adults living in the rental unit, but discovered in July 2019, that a perhaps 4th adult lived there, as an unknown person was with the tenant and occupants when they met to sign the latest tenancy agreement. The landlord said he never intended for four adults to live in the rental unit.

The landlord said that he has spent perhaps \$2,000.00 in repairing and replacing appliances in the rental unit. For instance, he had the refrigerator repaired, but ultimately had it replaced. The landlord submitted that the extra occupants meant extra food in the refrigerator, causing a strain.

The landlord additionally submitted that there was a leak in the kitchen sink and that he had to replace an oven fan, as it must be on all the time.

The landlord submitted that the tenant and occupants are doing laundry everyday, which caused him to have to replace the washing machine earlier in the year.

In response to my questions, the landlord guessed the refrigerator was 10 years old, and he said he ultimately replaced it with one 4-5 years old.

The landlord also guessed the washing machine, the oven fan and kitchen sink were all 10 years old. The landlord submitted that he had been living abroad for 15 years, returned, moved into the rental unit in 2014 for a year, and vacated.

Tenant's response-

The tenant, through her representative, submitted that there have always been four people living in the rental unit and that there are no restrictions in the tenancy agreement about a number of occupants.

The tenant submitted that all the appliances seemed used when they moved in and that they were out of order for a long time before being fixed by the landlord. The tenant submitted that the landlord has not been responsive to some of their repair requests and that the oven fan did not quit working until 2019.

The tenant submitted that the refrigerator manufacturing date was 2003 and that the manufacturing date of the original washing machine was 2008.

The tenant submitted that the boxes seen by the landlord were storage boxes.

Tenant's request for an order for the landlord's compliance-

The tenant submitted that the landlord threatens them with evictions when they make a repair request.

Additionally, the tenant submitted that for the first time, the landlord provided a notice of a monthly inspection, for November 24, 2019, after serving the Notice, and commenced taking pictures of the suite and their personal possessions, without permission.

Landlord's response-

The landlord submitted that he has a right to the monthly inspections and that his purpose was to check the condition of the rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Cancellation of the Notice-

Subparagraph 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where there are an unreasonable number of occupants in a rental unit.

The landlord bears the burden of proving he has grounds to end this tenancy and must provide sufficient evidence to prove the cause alleged on his Notice.

The landlord has provided evidence that alleges that there are at least three additional occupants residing in the rental unit. This was uncontested by the tenant.

Therefore, the issue is whether this number is unreasonable.

The landlord submitted that this number is unreasonable as there was an additional strain on the appliances and carpet.

I reject this assertion by the landlord. When questioned, the landlord could not with any certainty state the age of the appliances, and I find his answers were speculation.

Residential Tenancy Policy Guideline 40 provides the useful life of building elements. A refrigerator and washing machines have useful lives of 15 years.

The landlord has said that he was living abroad for 15 years, moved into the rental unit for a year in 2014, and then rented the suite to the tenant. The landlord did not provide evidence that in the 15 years abroad or that in the year he lived in the rental unit, the appliances were replaced.

Under the evidence and circumstances here, I find it reasonable that the appliances that were replaced had reached the end of their useful life and the landlord was simply fulfilling his obligations under the Act.

I do not find this supports that the tenant or number of occupants caused a strain on the appliances.

I find, on a balance of probabilities, that the landlord has submitted insufficient evidence to prove that four adults living in an 800 sq. ft., two-bedroom rental unit is an unreasonable number of occupants.

On this basis, I find that the landlord's 1 Month Notice is without merit. The tenant's application to cancel the 1 Month Notice is granted.

I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Order requiring the landlord's compliance with the Act-

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act.

Pursuant to section 29 of the Act, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

In considering the landlord's own evidence, I find his taking photographs of the tenant and occupants' personal property on his monthly inspection On November 24, 2019, calls into question whether that inspection was for a lawful purpose or for gathering evidence for this dispute.

I inform the landlord he is to provide the tenant with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the Act. If the landlord chooses to attach the notice of entry to the tenant's door, the tenant is not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by mail or registered mail, the tenant is not deemed

to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

I cautioned the landlord at the hearing that, although he is allowed to enter the rental unit for a monthly inspection, that inspection must be for a lawful purpose. Otherwise, the tenant may seek compensation for the loss of her quiet enjoyment.

I therefore order the landlord to comply with his obligations as described above in providing notice to the tenant, which must also contain the specific time, date, and purpose for entering.

Additional matter-

The parties were advised that there was no necessity to sign a new tenancy agreement each year, as by the terms of each of their tenancy agreements, the tenancy continued on a month-to-month basis after the end of each of the fixed terms.

I further advised the parties that although they may continue to sign new condition inspection reports, there is only an obligation under the Act to do so at the beginning and end of the tenancy.

As the tenant has been successful in this application, I grant her recovery of her filing fee of \$100.00.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

The tenant is allowed to enforce this order by deducting \$100.00 from a future month's rent, notifying the landlord when this deduction is made.

The landlord may not serve the tenant with a 10 Day Notice to End the Tenancy for Unpaid Rent when this deduction is being made.

Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to withhold a future month's rent payment of \$100.00 in satisfaction of her monetary award for recovery of the filing fee.

The landlord has been ordered to comply with the Act as directed above.

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: December 31, 2019

Residential Tenancy Branch