



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated October 29, 2019 ("One Month Notice"), and for an Order for regular repairs.

The Tenant and a legal advocate for the Tenant, K.C. ("Advocate"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 35 minutes and was monitored throughout this time. The only persons to call into the hearing were the Tenant and the Advocate, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenant and the Advocate.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Advocate testified that he served the Landlord with the Application and Notice of Hearing documents by Canada Post registered mail, sent on November 12, 2019. The Advocate said that he has met with the Landlord twice and spoken with him on the telephone a number of times; therefore, he was puzzled by the Landlord's failure to attend the teleconference hearing. Based on the testimony before me and on a balance of probabilities, I find that the Landlord was served with the Application and Notice of Hearing documents pursuant to the Act.

I explained the hearing process to the Tenant and gave him an opportunity to ask questions. During the hearing the Tenant and the Advocate were given the opportunity to provide their evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant and the Advocate provided the Parties' email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order for the Landlord to complete repairs in compliance with the Act, regulation, or tenancy agreement?

Background and Evidence

The Tenant said that the periodic tenancy began approximately ten years ago, and that the current monthly rent is \$685.00, due on the first day of each month. The Tenant said that he paid the Landlord a security deposit of \$200.00, and no pet damage deposit.

Eviction Notice

The Tenant submitted a copy of the One Month Notice that was served on him in person on October 29, 2019. It has the rental unit address, was signed and dated and had an effective vacancy date of November 30, 2019. The grounds for the eviction set out on the second page of the One Month Notice were that the Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk. On the section of the One Month Notice entitled "Details of Cause(s)", the Landlord wrote:

Unit was renovated and a heat pump was installed during renovations. Tenant has refused to use that heat system (+ cooling)... 12000 BTU is using up to 5 portable heating units, removed smoke detector.

The Tenant agreed that he does not use the heat pump system that the Landlord installed, because he feels it was installed improperly and that it is unsafe and does not meet building code requirements. Further, the Tenant said that when he has turned on the heat pump system, it blows warm air for about ten minutes, but then starts blowing cold air. The Tenant made other comments about the inadequacy of the heat pump, but I will address those below in the next section.

The Landlord did not attend to present any evidence or testimony to support the One Month Notice.

Repair Request

In his Application, the Tenant said that the Landlord installed a heat-pump system, but that he did not install all of the components of the system. Rather, the Tenant said that the Landlord did not install a component used for gathering fresh air. In the hearing, the Tenant said:

[The Landlord] got a heat-pump package from some place down in the States. One component was supposed to be on the property to gather fresh air. It has its own internal filters and the fresh air is ducted to each and every heater. The fresh air is a separate thing. The first thing that [the Landlord] did was get rid of that fresh air machine, load it on his truck, and it has never been seen since. I refused to turn the heater on; I tried a few times to see it. I turned it on, and it blows hot air for 6 – 10 minutes and then it blows cold air.

In his Application, the Tenant said:

The Landlord insists that I have put his property at significant risk because I do not use the heating system he recently installed. Instead, I depend on two (not five) electric space heaters. However, the heating system installed is unsafe and does not meet building code requirements. It is therefore unlawful. Additionally, the unit installed is a fire hazard due to “gerry-rigged” electrical connections. Evidence is being collected on these particulars. As well, the heating system does not work well and blows cold air rather than warmed air. I am a 74-year old man who needs to live in a heated unit. The smoke detectors have not been removed.

The Tenant said that he uses his own heaters and keeps the rental unit warm. He said he does not leave them on all day, but turns them on in the morning to get the chill out and then turns them off. The Tenant said that he would like to see the heat pump repaired; he said, “it should be looked at by somebody from [the heat pump manufacturer].”

The Advocate said that the Landlord has not been uncooperative over the last month. Given the Tenant’s age and health status, and the involvement of his family, all of these

things are being discussed with the Landlord. "I had every expectation that he would be here today. He was still open to negotiation."

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Eviction Notice

Where a tenant has applied to cancel a One Month Notice, the landlord must provide their evidence first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the One Month Notice.

The Landlord did not attend the hearing by 9:40 a.m. to present his evidence or submissions in support of the One Month Notice, and the burden is on the Landlord to prove the Notice was issued for the reasons stated. I find that the Landlord has failed to show cause to end the tenancy.

Therefore, I grant the Tenant's Application to cancel the One Month Notice issued on October 29, 2019. The One Month Notice is cancelled and is of no force or effect. The tenancy will continue until legally ended in accordance with the Act.

Repair Request

Section 32 of the Act states that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the Tenant's undisputed evidence that the new heat-pump system was not installed pursuant to the manufacturer's instructions. I accept the Tenant's undisputed evidence that the heat-pump system does not provide consistently warm air when turned on. I find that the Tenant's solution to use portable heaters is a reasonable, short-term response to the Landlord's flawed heat-pump system.

As a result, I, therefore, grant the Tenant's Application and make the following repair Orders:

- **I Order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the Tenant's rental unit as soon as reasonably possible and not more than 30 days after the date of this decision to assess if there are any issues with the heating system(s) for the building in which the Tenant's rental unit is located.
- **I Order** the Landlord to give proper written notice of the date and time that the professional will attend the rental unit for the inspection in accordance with section 29(b) of the Act so that the Tenant may arrange to be home or to have a representative of their choosing present.
- **I Order** that the Landlord obtain from the qualified professional a written report of the inspection completed which identifies the company or professional by name, states the date and time of the inspection, the system(s) inspected, lists any deficiencies or malfunctions identified, and any suggestions made for repairs.
- **I Order** that the Landlord provide a copy of this the report to the Tenant as soon as reasonably possible and not more than five (5) days after receipt of the report by the Landlord.
- **I Order** the Landlord to have any problems or deficiencies identified in the report repaired as soon as reasonably possible, and in any event, not more than 30 days after the date the professional inspects the rental unit.
- **I Order** the Landlord to have any problems or deficiencies identified in the report repaired as soon as reasonably possible, and in any event, not more than 30 days after the date the professional inspects the rental unit.

Should the Landlord fail to comply with the above noted Orders as written, the Tenant is authorized to deduct \$50.00 per month from their rent until the Landlord complies with the above noted Orders. If the Landlord has not complied with the above noted Orders within six months after the date of this Decision, the rent reduction is increased to \$100.00 per month until the Landlord complies with these Orders. This rent reduction **only** applies if the Landlord fails to comply with the specific Orders noted above, not if the Tenant simply disagrees with the findings of the qualified professional(s) in the reports or the recommendations made by them regarding any necessary repairs.

Conclusion

The Tenant's Application to cancel the One Month Notice is granted. The tenancy will continue until legally ended in accordance with the Act. The Tenant's Application seeking an Order for the Landlord to complete repairs is granted. I, therefore, Order the Landlord to comply with this Decision and the Orders described above.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 05, 2020

Residential Tenancy Branch