



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, RP, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order restricting the Landlord’s entry - Section 70;
3. An Order for repairs to the unit - Section 32; and
4. An Order for the Landlord’s compliance - Section 62.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim in relation to the notice to end tenancy is the primary matter and as the claims in relation to entry, repairs and compliance are not related to whether the tenancy will end and would not be relevant if the tenancy ends, I dismiss the claims in relation to entry, repairs and compliance with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reasons?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Relevant Background and Evidence

The following are agreed facts: There is no written tenancy agreement. The tenancy started in 2014. Current rent of \$500.00 is payable on the first day of each month. No security deposit was collected. The Landlord occupies a trailer on the same property as the rental unit. On January 23, 2020 the Landlord served the Tenant with a one month notice to end tenancy for cause. The Landlord then took back this notice and served the Tenant in person on February 1, 2020 with another notice to end tenancy for cause (the "Notice"). The Notice is on the same form with the same details and reasons as the original notice to end tenancy for cause. No copy of the Notice was provided by either Party for this hearing. The reasons stated on the Notice, as agreed by the Parties, are:

- tenant is repeatedly late paying rent;
- tenant or person permitted on the property by the tenant has engaged in an illegal activity that has, or is likely to,
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord;
- tenant has not repaired damage in a reasonable time.

The Landlord states that for each month from September 2019 to January 2020 the Tenant has paid its rent late. The Landlord has not provided any receipts or accounting documents. The Tenant state that it paid rent on the first day for each of those months except for December 2019 when the rent was paid on December 2, 2019. The Tenant states that it was late as the rent is always paid in cash and the Tenant's bank was not

opened on December 1, 2019. The Parties agree that the Landlord has never issued a receipt for any rents collected.

The Landlord states that the Tenant has caused damage to the property by installing a heating unit on the exterior of the unit (the "Heater") without the Landlord's permission. The Landlord states that he saw this damage on December 15, 2019 and told the Tenant to remove and repair the damage as soon as possible or when he could. The Landlord states that no deadline was provided to the Tenant for the repair. The Landlord states that the installation of the Heater is illegal as it is contrary to all housing codes and that electrical changes require permits which the Tenant did not obtain. The Landlord states that an electrician inspected the exterior work on January 12, 2020 and laughed telling the Landlord that the work required a permit. The Landlord did not provide any witness letter from the electrician. The Landlord believes that the Heater is dangerous as the connecting hose is bare leaving it open to possible damage by rodents and the leakage of diesel fumes into the unit. The Landlord believes that this is both a health hazard and a fire risk. The Landlord states that it is not sure whether the furnace gets plugged in or not. The Landlord states that no action was taken on the Heater until the Tenant started to swear at the Landlord and was not co-operating with the Landlord or helping the Landlord out. The Landlord states that the unit requires renovations to the heating system, the bathroom and kitchen so the tenancy must end. The Landlord states that it intends to move into the unit after the renovations.

The Tenant states that the Heater was installed because the unit had no heat. The Tenant states that the installation was done properly and that there is no safety risk to anyone or the unit. The Tenant states that although installed the Heater has never been used. The Tenant states that there is no electrical component for the Heater. The Tenant states that work on the installation began in the summer of 2019, that the Landlord watched the Tenant do the work at that time and that the Landlord has never asked the Tenant to stop the work or to remove the Heater. The Tenant states that the Landlord only raised the issue when the original notice to end tenancy was given to the

Tenant. The Tenant states that the installation has not caused any extraordinary damage because it is a mounted installation that can easily be removed and patched.

The Landlord states that the installation was not seen until December 12, 2019 as it is on the back side of the unit and cannot be seen. The Tenant states that he can remove the installation.

Analysis

Section 47(1) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy where, inter alia:

- the tenant is repeatedly late paying rent;
- the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time

Given the lack of supporting evidence of late rent payments from the Landlord and considering the Tenant's evidence of rents being paid on time except for being a day late in December 2019, I find on a balance of probabilities that the Landlord has failed to substantiate that the Tenant has been repeatedly late paying rent.

Policy Guideline #32 provides that in order to find an illegal activity it must be serious enough to have a harmful impact on the landlord, the landlord's property, or other

occupants of the residential property. The party alleging an illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw. Given the lack of supporting evidence from the Landlord that the installation of the Heater was contrary to any statute or bylaw, the Tenant's undisputed evidence that the furnace has never been used, I find that the Landlord has not provided sufficient evidence to substantiate that there has been a breach of a law or that the breach is serious enough to have a harmful impact.

Despite the Landlord's evidence of not knowing of the installation until December 2019, the Landlord's evidence that no action was taken on the installation until the Tenant stopped cooperating with the Landlord tends to support the Tenant's evidence that the Landlord knew of the installation several months before the notice to end tenancy was issued. Given the Landlord's evidence that no deadline was provided to the Tenant to remove the installation I find that the Landlord has not substantiated that the Tenant failed to remove the installation within a reasonable time.

As none of the reasons for the Notice have been found to be valid, I find that the Tenant has substantiated an entitlement to its cancellation. The Notice is therefore cancelled, and the tenancy continues.

Conclusion

The Tenant's claims in relation to entry, repairs and compliance are dismissed with leave to reapply.

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: March 06, 2020

Residential Tenancy Branch