



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ECO-WORLD PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, CNC, RP, RR, MNDCT

Introduction

On October 8, 2020, the Tenant made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities; and to cancel a One Month Notice to End Tenancy for Cause. The Tenant also applied for the following relief:

- to reduce rent for repairs, services or facilities agreed upon but not provided.
- for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.
- for an order for the Landlord to make repairs to the rental unit.

The matter was set for a conference call hearing. The Tenant and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the 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 Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has

applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the notices to end tenancy issued by the Landlord. The Tenant's other claims are dismissed with leave to reapply.

The Landlord and Tenant participated in prior hearings on April 23, 2020 and August 25, 2020.

In the Decision dated August 27, 2020, the Arbitrator writes:

With respect to compliance with the orders issued on May 29, 2020, I find the landlord did not comply. I make this finding considering:

- The landlord was ordered to obtain the services of a "qualified mould remediation company" to assess the moisture and mould issues in the rental unit. The quote and invoice provided by the repair person do not provide any information that would lead me to conclude he is a qualified mould remediation company or professional as his qualifications, training, or certifications are not indicated on any of the documentation provided to me by the landlord. Although the landlord's agent testified the repair person works for a restoration company, there is no indication as to the name of the company and I was not provided a reason the company was not contracted to do the work if in fact the company is a "qualified mould remediation company". Nor was the repair person called as a witness to describe the qualifications, training or certification in mould remediation he has obtained or describe the services he ordinarily performs for his employer.*
- The landlord was ordered to have the mould remediation company "assess the moisture and mould issues and provide a written report of their recommendations" and provide the report to the tenant. I am of the view that the person who performed the repairs prepared a quote and invoice for the repairs he proposed to make but that he did not prepare a report with that included an "assessment" of the moisture and mould issues that included a basis for his conclusions. To elaborate: the repair person concluded that the mould was from "internal moisture" in an email he wrote to the landlord's agent; however, he did not describe the reasons or basis for making that finding or describe the tests or inspections he performed. In reading the orders of the previous Arbitrator, I find*

the purpose of the requirement to “assess” refers to making a determination of the cause of the mould formation, identify areas affected by mould, identify the tests or basis for the conclusion, and provide recommendations not only to remediate the mouldy areas but to stop the formation of more mould. Further, the purpose of providing a written report to the tenant is to provide assurance that a professional has made a determination and identified how to remediate the problem so that the landlord’s response may be measured. Until such time the cause of the mould formation is determined by a person qualified to make such a determination, and the root cause of the mould rectified, I find it highly likely the mould will continue to form.

In light of the above, I find the landlord has yet to obtain the services of a qualified mould remediation company or professional to assess the cause of the mould and provide recommendations that will properly address the mould problem. As such, I am doubtful that the rental unit has been sufficiently remediated.

In light of the above, I provide the following orders and authorizations:

- 1. No later than September 15, 2020 the landlord must obtain the services of a qualified mould remediation professional company or individual to determine the existence of mould in the residential property; the location of mould; the location of water ingress (if any) or the reason for excessive moisture (if any); and, the necessary steps to remediate the presence of water ingress or excessive moisture and removal of mould.*
- 2. The landlord must require the mould remediation professional to put its findings in writing, including the basis for its conclusions, and the landlord must give the tenant a copy of the written report within two (2) days of receiving it. The mould remediation professional must describe the qualifications, training or certifications it holds with respect to assessing and providing recommendations concerning mould.*
- 3. No later than September 30, 2020 the landlord must commence the remediation activities recommended by the mould remediation professional and complete them within a reasonably timely manner. Upon completion of the recommended tasks the landlord must notify the tenant in writing that it has completed the recommended tasks and attach evidence that the tasks are completed (such as copies of the paid invoices).*
- 4. The tenant is entitled to a continued rent reduction of \$300.00 per month for the months of July 2020 onwards, until such time the landlord provides the tenant with written notification described in order number 3 above. The tenant’s monthly rent obligation will return to \$1200.00 for the month immediately following receipt of the landlord’s written notification described in order number 3 above.*
- 5. Should the mould remediation professional determine the tenant’s actions or lack thereof are causing or contributing to the formation of excess moisture and mould (such as not adequately heating and/or ventilating the rental unit), the tenant is ordered to comply with the recommendations made by the mould remediation professional immediately upon receipt of the mould remediation professional’s report.*

Issues to be Decided

- Is the tenancy ending based on a fundamental breach of the tenancy agreement regarding payment of rent?
- Does the Landlord have sufficient cause to end the tenancy based on a One Month Notice to End Tenancy for Cause?

Background and Evidence

The parties testified that the tenancy began in June 2017. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement. The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice in person on October 5, 2020. The 10 Day Notice provides that the Tenant has failed to pay rent in the amount of \$300.00.00 which was due on October 1, 2020. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Tenant disputed the Notice on October 8, 2020 within the required time period.

In response to the Landlords testimony, the Tenant's advocate submitted that the Tenant received a mould assessment report from the Landlord via email on October 5, 2020. The Tenants advocate points out that the Landlord is also required to complete the work.

The Tenant's advocate submitted that according to the previous decision from the Arbitrator, the Tenant is entitled to a \$300.00 rent reduction for July / August and September 2020 which amounts to \$900.00. In addition, the Tenant is entitled to a \$300.00 rent reduction for August 2020 because the Landlord did not complete the remediation and notify the Tenant of the completion in writing. According to the Arbitrators decision, the Tenant's monthly rent obligation returns to \$1,200.00 for the

month immediately following receipt of the landlord's written notification of the completion of recommended tasks.

The Tenant submits that there was no rent owing to the Landlord for October 2020 due to the \$300.00 rent reductions for July/ August/ September / and October 2020.

One Month Notice to End Tenancy for Cause dated October 5, 2020 ("the One Month Notice")

The Landlord served the One Month Notice to the Tenant in person on October 5, 2020. The Landlord provided a copy of the One Month Notice. The Landlord cited the following reasons for ending the tenancy within the One Month Notice:

Tenant has allowed an unreasonable number of occupants in the unit /site

The One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on October 8, 2020 within the required time period.

The Landlord testified that the rental unit is a two-bedroom unit and the Tenant has four people living in the unit. The Landlord submitted that the Tenant had someone else move in.

When the Landlord was asked how she knows that the Tenant permitted someone to move in, she replied that she does not know; however, a neighbor reported it to her. When the Landlord was asked whether she approached the Tenant about her concern, she replied that she sent the Tenant an email about the issue.

When the Landlord was asked why she feels the number of occupants is unreasonable for a two-bedroom unit; she replied that it is unreasonable because a neighbor complained, and the unit is a small two-bedroom unit. The Landlord stated that the tenancy agreement states there are no other occupants permitted.

In response to the Landlord's testimony the Tenants advocate submitted that there are no restrictions within the tenancy agreement on occupants.

The Tenant testified that she originally moved into the unit with her partner and her daughter. Since that time, she has had another child and her partner has moved out. The children's father attends the rental unit to care for their children and stays over on occasion. The Tenant testified that the children's father maintains a separate residence elsewhere and has not moved into the unit.

The Tenant testified that she has never received a warning from the Landlord regarding too many occupants.

The Tenant and her advocate submitted that the issuance of the notices to end tenancy are retribution from the Landlord due to the other hearings based on the tenant's application for the Landlord to make repairs to the rental unit.

Analysis

10 Day Notice

Section 26 of the Act states that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the Act, the regulations, or the tenancy agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I find that the Landlord has not complied with the Arbitrators order regarding repairs to the unit and therefore, the Tenant was not required to pay rent for October 2020. An Arbitrator previously ordered that the Tenant could reduce the rent by \$300.00 each month. I find that the rent reductions for July, August, September, and October amount to \$1,200.00.

I cancel the Landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 5, 2020.

One Month Notice

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

I have reviewed the tenancy agreement and I find that the agreement does not prohibit additional occupants. The agreement provides that the Landlord may discuss an issue of unreasonable number of occupants with a Tenant and may serve a notice to end tenancy.

I find that there is insufficient evidence from the Landlord to prove that the Tenant has permitted a person to move into the rental unit. The Tenant is allowed to have guests and the Landlord is not permitted to unreasonably restrict the Tenant having guests. I find it is reasonable that the Tenant has the children's father over on occasion as a guest and to help with their care.

The Landlords One Month Notice did not cite unreasonable disturbance as a reason for ending the tenancy. The Landlords evidence that there have been complaints due to high traffic to the unit and or noise from the unit is not relevant to the issue cited within the One Month Notice and will not be considered.

I cancel the Landlords One Month Notice to End Tenancy for Cause dated October 5, 2020.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Landlord did not provide sufficient evidence to support ending the tenancy for a fundamental breach of the tenancy related to payment of rent, or due to an unreasonable number of occupants living in the unit.

The two notices to end tenancy are cancelled. The tenancy will continue until ended in accordance with the Act

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 23, 2020

Residential Tenancy Branch