Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, LRE, RP, OLC, FFT

Introduction

The tenant made an application for dispute resolution seeking various relief under the *Residential Tenancy Act* ("Act"). Only the tenant attended the hearing on February 19, 2021 at 11:00 AM, which was held by teleconference.

The tenant testified that she served the landlord with a Notice of Dispute Resolution Proceeding by way of Canada Post registered mail on December 11, 2020. The tracking number was provided to me and recorded on the cover page. The Canada Post tracking website indicated that the registered mail was delivered on December 14, 2020. Based on this evidence I find that the landlord was served with the Notice of Dispute Resolution Proceeding in compliance with the Act and the *Rules of Procedure.*

Issues

1. Is the tenant entitled to an order cancelling a One Month Notice to End Tenancy for Cause ("Notice")?
2. Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
3. Is the tenant entitled to an order for repairs?
4. Is the tenant entitled to an order that the landlord comply with the Act, the regulations, or the tenancy agreement?
5. Is the tenant entitled to recovery of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy began on April 1, 2019 and monthly rent is $1,120.00. The tenant paid a security deposit of $600.00. There is a copy of a written tenancy agreement in evidence.

The tenant seeks to ensure that the landlord does not simply provide a “blanket” notice of entry into the rental unit. A copy of the landlord’s “Notice of Entry” was submitted into evidence, and on which the landlord has listed a total of nine dates, each of which indicates a possible visit between 9:30 AM and 6:00 PM or 4:30 PM. Below that information, the landlord handwrites (in reference to a printed reproduction of section 29 of the Act), “This Section does not apply to Showings.”

The tenant seeks to somehow prevent the landlord from spreading lies and slander about her. In support of this claim she submitted 61 pages of (primarily) email correspondence between the parties.

The tenant seeks an order for repairs that she has repeatedly asked the landlord for. Submitted into evidence are various documents relating to various issues.

Finally, the tenant seeks to dispute a notice to end tenancy that was issued by the landlord on November 27, 2020. As the onus is on the landlord to prove the grounds on which such a notice is given, I did not hear any evidence from the tenant in respect of this claim.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Application to Cancel the One Month Notice to End Tenancy

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based. As the landlord failed to attend the hearing, they have not proven the grounds on which the Notice was given.

Accordingly, I hereby order that the Notice is cancelled. It is of no force or effect and the tenancy shall continue until it is ended in accordance with the Act.

2. Application for Order Suspending or Limiting Landlord's Right to Enter

While the showings have, according to the tenant, largely dried up, the manner in which the landlord has provided notice does not comply with the Act.

Section 29 ("Landlord's right to enter rental unit restricted") of the Act states:

> 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
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> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
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> (i) the purpose for entering, which must be reasonable;
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees […]

In this case, the landlord did not provide a time of entry. Rather, she simply referenced a duration of time (that is, between "9:30 AM AS REQ" and "6:00 PM AS REQ") in which a showing might occur. I do not find that a broad timeline meets the requirement of a time of entry for the purposes of section 29(1)(b)(ii) of the Act. Any such notice of entry is invalid and of no legal force or effect. Finally, the landlord's handwritten notation that section 29 of the Act somehow does not apply to "showings" is, quite frankly, absurd and has no basis in law. Any and all entries by a landlord into a rental unit are subject to section 29 of the Act, regardless of whether they are "showings."

Given the above, I order that the landlord may only give notice to enter the rental unit in a manner complying with section 29 of the Act. Further, any such notice must state a *specific* date and time that entry will occur. For example, February 19, 2021 at 3:00 PM.

3. Application for Order for Repairs

Section 62(3) of the Act states that an arbitrator "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

Section 32(1) of the Act states that

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

What these two sections of the Act mean, taken together, is that if I am satisfied that an action by a landlord is necessary to ensure that they are meeting their obligations under section 32(1) of the Act, then I have the authority to issue an order under section 62(3) compelling a landlord to take certain actions in respect of meeting those obligations.

In this dispute, however, while there are various non-emergency repairs that allegedly must be addressed, the tenant has not proven that the requested repairs must be made in order for the landlord to meet her obligations under section 32(1) of the Act.

Therefore, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her application for an order for repairs. That aspect of her application is dismissed without leave to reapply.

That having been said, if there are future repairs that need to be undertaken in order for the rental unit to meet the standards set out in section 32(1) of the Act then the tenant is at liberty to reapply for dispute resolution if necessary.

4. Application for Order for Landlord Compliance

Though the tenant seeks some sort of relief under section 62 of the Act related to the manner in which the landlord had allegedly communicated with her, including lies and other false information, I am unable to find a basis for ordering any such relief. Unless a landlord’s conduct breaches section 28 of the Act (“Protection of tenant’s right to quiet enjoyment”), and there is no evidence before to find that the landlord has breached this section of the Act, I am unable to provide relief to the tenant. This aspect of the tenant’s application is therefore dismissed without leave to reapply.

5. Application for Recovery of the Filing Fee

Section 72(1) of the Act permits an arbitrator to order payment of a fee under section 59(2)(c) by one party in a dispute to another party. A successful party is generally entitled to recover the cost of the filing fee. As the tenant was successful with respect to at least two aspects of her application, I grant her claim for the $100.00 filing fee.

Pursuant to section 72(2)(a) of the Act I hereby authorize and order the tenant to make a one-time deduction of $100.00 from a future rent payment of her choosing in full satisfaction of this award.

Conclusion

I grant, in part, the tenant's application, as outlined and explained within each of the above-noted sections for each claim.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 19, 2021

Residential Tenancy Branch