



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, RP, RR, CNR, PSF, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. I find that the applicant submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. They filed many individual files in a variety of file formats instead of a single pdf file with numbered pages, have uploaded multiple duplicates of the same files, and the file names are inconsistent and uploaded in no sequential manner such that it is confounding for the reader and difficult to locate individual pieces of evidence. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord be ordered to make repairs to the rental unit? Should the landlord be ordered to provide services or facilities?

Is the tenant entitled to a reduction of rent?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The rental unit is a single detached home with multiple levels. The tenant began residing in the rental unit in July 2017. There was an earlier fixed-term tenancy agreement between the tenant and a different landlord with an additional co-tenant. The agreement provides that fixed-term tenancy concludes on July 14, 2020 at which point the tenancy would have continued on a month-to-month basis. The tenant entered a new tenancy agreement with the present landlord commencing July 15, 2020.

The monthly rent is \$4,000.00 payable on the first of each month. Copies of the current tenancy agreement and earlier agreement were submitted into evidence.

The landlord submits that the present tenancy is a continuation of the previous fixed-term tenancy. Counsel explained that the previous landlord is the parent of the current landlord who was holding the rental property in trust until the landlord reached the age of majority.

The parties say there were incidents when the tenant's cheques issued under the previous tenancy bounced. The landlord submits there is an arrear of \$14,000.00 arising from incidents in 2018 and 2019. The landlord says that as the current tenancy is a continuation of the earlier fixed-term tenancy they issued a 10 Day Notice to End Tenancy for the \$14,000.00 rental arrear. The 10 Day Notice was served on the tenant by registered mail sent on March 12, 2021. A copy of the notice was submitted into evidence.

The tenant testified that they picked up the 10 Day Notice from the post office on March 24, 2021 and filed their application for dispute resolution on March 26, 2021. The tenant did not provide an explanation as to why they did not pick up the registered mail earlier.

The parties agree that there was an incident of water ingress in the basement of the rental unit discovered on December 21, 2020. The tenant reported the damage to the landlord on that date and steps were taken to remediate the issue. The parties gave evidence regarding the nature and extent of the damage and the steps taken to address and repair the damage. The parties agree that due to the water ingress the basement of the rental unit became unusable.

The tenant testified that as at the date of the hearing there are outstanding issues that have not been completed including the basement walls needing to be painted and finished and the floors of the basement requiring replacement. In addition the tenant submits that the rental building has multiple leaks which could lead to further water damage.

The landlord gave evidence regarding the work that has been completed to date but did not dispute the tenant's submission that there are outstanding issues. The landlord submitted into evidence copies of invoices, receipts and reports for the work that has been completed. Many of the receipts and invoices concern work that occurred prior to

the discovery of the water ingress on December 21, 2020 and are for unrelated issues. The invoices for the work performed after the flooding in the basement shows work continuing through May 2021.

The tenant gave testimony regarding the impact that the loss of use of the basement due to flooding had on their daily routines. The tenant testified that they moved their personal items out of the basement into off-site storage, have accommodated workers and the landlord's agents coming and going from the suite, endured ongoing noise from the work being performed and were required to liaise with multiple workers, the landlord's agents and insurers to arrange for work. The tenant gave undisputed testimony that the basement of the rental suite remains unusable with outstanding work that has yet to be completed as of the date of the hearing, nearly eight months after the flooding was first reported in December 2020.

Analysis

Section 88(c) of the *Act* provides that a document, including a 10 Day Notice may be served on a party by sending a copy by registered mail to the address at which the person resides. Section 90(a) provides that a document served in accordance with section 88 is deemed served on the fifth day after it is mailed.

Residential Tenancy Policy Guideline 12 sets out that:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Guideline further provides that:

A party wishing to rebut a deemed receipt presumption should provide to the arbitrator clear evidence that the document was not received or evidence of the actual date the document was received.

In the present circumstances the landlord provided undisputed evidence that the 10 Day Notice was served on the tenant by registered mail sent on March 12, 2021. Pursuant to sections 88 and 90 of the Act and in accordance with the Policy Guidelines I find that the tenant is deemed served with the 10 Day Notice on March 17, 2021, five days after mailing.

The tenant testified that they picked up the registered mail on March 24, 2021, but provided no cogent explanation as to why there was a delay in picking up the item. As set out in the Policy Guideline the failure of a party to pick up an item served by registered mail does not override the deeming provisions. I find insufficient evidence that the failure of the tenant to pick up the registered mail is the result of any circumstances outside of the tenant's control. I find that there is no breach of the principles of procedural fairness or natural justice in finding that pursuant to sections 88 and 90 of the Act the tenant is deemed served on March 17, 2021.

Section 46(4)(b) provides that a tenant may dispute a 10 Day Notice by making an application for dispute resolution within 5 days after receiving a notice. As the tenant is deemed to have received the 10 Day Notice on March 17, 2021, they had until March 22, 2021 to file their application. The tenant filed their application for dispute resolution on March 26, 2021, outside of the timeline provided under the Act. Accordingly, I dismiss the portion of the tenant's application seeking cancellation of the 10 Day Notice.

Section 55 of the *Act* provides that:

If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The 10 Day Notice provides that there is a rental arrear of \$14,000.00 that was due on March 1, 2021. The parties gave evidence that the arrear arises from a series of

dishonoured cheques issued by the tenant in 2018 and 2019. The landlord takes the position that the present fixed-term tenancy is a continuation of the tenancy agreement entered in July 2017 and that the current landlord is entitled to end the tenancy for these earlier arrears. The tenant submits that the previous fixed-term tenancy ended on July 14, 2020 in accordance with the signed agreement and a new tenancy was entered with the current landlord on July 15, 2020.

I find insufficient evidence in support of the landlord's position that the successive fixed-term tenancies ought to be considered one continuing tenancy. On the face of the tenancy agreements submitted the only individual who is a party to both agreements is the tenant. The earlier fixed-term tenancy provides a different landlord. While the landlord now submits that there is a familial relationship between the current and previous landlords, I find little documentary evidence in support of this explanation. I find little evidence that the current landlord assumed the previous tenancy or that they are entitled to demand unpaid rent arising from the agreement the tenant had with the previous landlord.

If the current landlord assumed the earlier tenancy it would be reasonable to expect that there would have been some documentary materials informing the tenant of this change in landlord during the fixed-term tenancy. If the earlier fixed-term tenancy was continuing, it would simply have converted to a month-to-month tenancy. Instead the tenant signed and entered into a new fixed-term tenancy agreement as of July 15, 2020 with a new landlord. The tenant had an obligation under the new tenancy agreement to pay monthly rent to the current landlord.

Based on the totality of the evidence I am not satisfied that there is a rental arrear for the present tenancy that gives rise to the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent. The evidence of the correspondence between the parties shows little mention of this arrear as being outstanding or that the amount is now payable to the new landlord under the present fixed-term tenancy agreement. I find insufficient evidence that the current landlord has any basis to seek rent that was unpaid for an earlier tenancy agreement between the tenant and a previous landlord.

Accordingly, I find that the 10 Day Notice of March 12, 2021 to be of no force or effect as I find there is no rental arrear that gives rise to its issuance.

I note parenthetically that the basis for the arrears the landlord claims are for payments made between September 2018 and March 2019. The portions of the correspondence submitted into evidence by the parties shows little mention being made of this arrear during the previous fixed-term tenancy or during the present tenancy. As I have found the 10 Day Notice of no force or effect and it is not necessary to make a finding, I note that the representation and conduct of both the previous landlord and the present in continuing to accept monthly rent payments and making no indication that the dishonoured cheques received in 2018 and 2019 has created a rental arrear, may give rise to estoppel where it is inequitable to seek enforcement of contractual rights.

Section 32 of the Act provides that:

32(1) 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

I am satisfied with the evidence of the parties that there was water ingress in the rental unit requiring repairs and work to be done. I accept the undisputed evidence of the parties that the repairs are still ongoing as at the date of the hearing. The landlord provided a large volume of evidence and testimony about the work that has been performed to date but did not dispute the tenant's testimony that there is still repairs and work outstanding. The landlord had little information on the schedule of the work or when they are expected to be completed.

Under the circumstances, based on the undisputed testimony of the tenant I find it appropriate to issue an order that the landlord perform the following repairs:

- 1) Complete the sanding, cleaning and painting of walls in the basement of the rental unit.

- 2) Complete the replacement of floors in the basement of the rental unit.
- 3) Inspect and make repairs to the rental property to prevent further water ingress or leaks.

Section 65 (1)(f) of the *Act* allows me to reduce the past or future rent by an amount equivalent to the reduction in value of a tenancy agreement. I accept the undisputed evidence of the parties that water ingress in the rental unit was identified and reported on December 21, 2020.

I find that much of the landlord's submissions regarding the issue of repairs and reduction in the value of the tenancy to be irrelevant and of no consequence to the matter at hand. The landlord's submission that they have been responsive to the tenant's request for repairs prior to the flooding of the basement or that they have incurred costs for repairs does not absolve them from their ongoing duty to maintain the rental property. A landlord cannot submit that they because they have incurred costs in the past making repairs they are no longer responsible to maintain the property. Similarly, I find the landlord's submission regarding market rent for similar properties to be of no matter in determining whether the value of this tenancy has been reduced due to repairs, services or facilities that have been withheld.

I find that despite the repairs and work arranged by the landlord there has been a significant reduction in the value of this tenancy due to the damage to the rental unit and the subsequent ongoing work. I am satisfied with the evidence including the work orders and invoices as well as the multiple photographs of the suite and the testimony of the parties that there was significant work that was required on the rental unit resulting in the basement floor being completely unusable for several months.

The tenant provided clear testimony on the impact that losing the use of a floor of the rental building had on their day-to-day activities. The tenant has lost the use of approximately 1/3 of the rental property beginning in December 2020 when the water ingress was noted. I accept the evidence of the tenant that they continue to be unable to use the basement floor of the rental property. While the tenant continues to reside in the rental unit, the nature of the damage and ongoing work is such that the tenant has

had to modify their daily routines, arrange for off-site storage of personal items and limit their use of the rental unit.

Based on the totality of the evidence I find that a retroactive rent reduction in the amount of \$10,500.00 (7 months- December 21, 2020 to July 13, 2021 @ \$1,500.00 per month = \$10,500.00) to be appropriate. This figure is approximately 38% of the monthly rent for the tenancy and reflects that the tenant has been able to reside in the rental unit while the value of the tenancy has been reduced due to a floor being unusable and the interference caused by the ongoing need for repairs.

I further find it appropriate to order that the monthly rent for this tenancy be reduced by \$1,500.00 until such time as the landlord completes all of the repairs listed above. I order that the monthly rent will return to the amount required by the tenancy agreement in the month following the completion of the repairs.

Should a dispute arise as to the extent to which the repairs ordered have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the *Act* as to whether the repairs have been completed in accordance with this decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with this decision once the landlord has undertaken the repairs ordered.

As the tenant was successful in their application they are entitled to recover the filing fee from the landlord.

Conclusion

The landlord is ordered to perform the following repairs:

- 1) Complete the sanding, cleaning and painting of walls in the basement of the rental unit.
- 2) Complete the replacement of floors in the basement of the rental unit.
- 3) Inspect and make repairs to the rental property to prevent further water ingress or leaks.

I order that the monthly rent for this tenancy is reduced by \$1,500.00 until such time as the repairs ordered above are completed. I order that the tenant's rent return to the normal monthly amount required by the tenancy agreement and the *Act* in the month following the completion of these repairs.

I issue a one-time monetary order in the tenant's favour in the amount of \$10,600.00 representing a retroactive reduction in rent of \$1,500.00 for a period of seven months and recovery of the filing fee. The landlord must be served with this Order as soon as possible. Should the ~~tenant~~ **landlord** fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The balance of the tenant's application is dismissed without leave to reapply.

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: July 14, 2021

Residential Tenancy Branch