



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, LRE, RP, FFT

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use, for an Order suspending or setting conditions on the Landlord's right to enter the unit, for an Order requiring the Landlord to make repairs, and to recover the fee for filing this Application for Dispute Resolution.

At the outset of the hearing the Tenant stated she has vacated the rental unit and she is withdrawing all of her claims except the application to recover the fee for filing the Application for Dispute Resolution. The Tenant was advised that she will need to establish that her Application for Dispute Resolution has merit if she wishes to recover the filing fee and she stated that she wished to proceed with her claim to recover that fee.

The Tenant stated that the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on November 19, 2021 was sent to the Landlord, via registered mail, although she does not recall the date of service. The Landlord acknowledge receiving these documents in November of 2021 and the evidence was accepted as evidence for these proceedings.

Neither party submitted evidence to the Residential Tenancy Branch after November 19, 2021.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that

they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree this tenancy began in 2013 and that rent was due by the first day of each month.

The Landlord and the Tenant agree that on November 04, 2021 the Landlord posted a Two Month Notice to End Tenancy for Landlord's Use on the door of the rental unit, which declared that the rental unit must be vacated by January 31, 2022. The reason for ending the tenancy cited on the Notice is that the rental unit will be occupied by the landlord or the landlord's close family member. The Notice specifically declares that it will be occupied by the landlord or the landlord's spouse.

The Landlord and the Tenant agree that on December 08, 2021 the Tenant posted a notice to end tenancy on the Landlord's door, which declared that she would be vacating the unit on December 18, 2021.

The Landlord stated she lives in a house on the residential property, the rental unit is currently being used as a rec room for her children, and she intends to move into the rental unit once she has prepared her house for renting it to a third party.

The Tenant stated she does not believe the Landlord wants to move into the rental unit, in part, because in an email the Landlord sent on October of 2020 the Landlord "alluded" to re-renting the unit for increased rent if the Tenant moved out. She stated that she felt the Landlord was threatening to end the tenancy if she asked the Landlord to make repairs.

The Landlord stated that she did not threaten to end the tenancy if the Tenant asked for repairs and she did not threaten to end the tenancy for the purposes of increasing the rent.

The Tenant stated that in November of 2020 the Landlord served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use because the Landlord intended to move into the rental unit. She stated that the Landlord subsequently agreed to "rescind" this Notice and that it was dismissed by a Residential Tenancy Branch Arbitrator at a subsequent dispute resolution proceeding.

The Landlord stated that in November of 2020 she served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use because she intended to move into the rental unit. She stated that she subsequently agreed to withdraw this Notice due to the COVID-19 pandemic, as she did not wish to disrupt the Tenant during the pandemic. She stated that she did not attend the hearing in which the 2020 Notice was dismissed by a Residential Tenancy Branch Arbitrator because she had already agreed to withdraw the Notice.

The Tenant stated that in November of 2021 the Landlord advised her that the Landlord intended to move into the rental unit and rent her current home to a third party. She stated that the Landlord also advised her that she would be using the rental unit as recreation space for her children. The Landlord stated that it is likely she provided this information to the Tenant, as that was her intent.

The Tenant stated that the hydro account was in her name during her tenancy and that she cancelled her hydro account on December 18, 2021. She stated that a neighbour told her that there is currently no hydro service in the rental unit.

The Landlord stated that on February 24, 2022 she realized the hydro for the rental unit had been terminated. She stated that there was hydro in the unit in the week prior to February 24, 2022 when her children were playing in the unit and she does not know when hydro service was terminated. She stated that she has not yet arranged to have hydro service restored but she intends to do so.

The Tenant stated that she decided to give notice to end the tenancy because after she filed this Application for Dispute Resolution the Landlord sent 36 text messages, which she described as "ludicrous" and "psychotic". The Tenant stated that she decided that her safety "could be in danger" and that she opted to move out of the rental unit.

The Landlord stated that she did send text messages to the Tenant after she received the Application for Dispute Resolution, which were neither threatening nor inappropriate.

Although the Tenant did not submit copies of any of the text messages the Landlord sent after being served with the Application for Dispute Resolution, the Tenant was given the opportunity to read an example of the text messages. She was asked to read out two of the egregious text messages sent by the Landlord. In these two text messages, which the Landlord agreed had been sent, the Landlord is asserting her right to end the tenancy and it appears there is some animosity between the parties. I cannot conclude, however that they were threatening, "ludicrous", or "psychotic".

The Tenant was asked if the Landlord had ever entered the rental unit without lawful authority and she replied that she was "not aware" of an illegal entry. The Landlord stated that she did not even have a key to the rental unit.

The Tenant stated that she reported deficiencies with the stove, the refrigerator, and the front entry on several occasions and those deficiencies were not investigated nor repaired.

The Landlord stated that she offered to inspect the deficiencies but the Tenant did not respond to those offers. She stated that she also provided the Tenant with the name of a repairperson but the Tenant did not contact that person.

The Tenant stated that she did respond to the Landlord's attempt to inspect the deficiencies but the Landlord did not follow up with the inspection.

The Tenant further submits that when the dryer needed repair the Landlord delayed replacing the appliance for over a year. She submits that when a new washer and dryer were delivered, she was required to install the appliances.

Analysis

On the basis of the undisputed evidence, I find that on November 04, 2021 the Tenant received a Two Month Notice to End Tenancy for Landlord's Use, which declared that the rental unit must be vacated by January 31, 2022 because the unit will be occupied by the landlord or the landlord's spouse.

On the basis of the undisputed evidence, I find that the Tenant disputed the Two Month Notice to End Tenancy for Landlord's Use, which is one of the issues in dispute at these proceedings.

On the basis of the undisputed evidence I find that on December 08, 2021 the Tenant gave the Landlord written notice that she would be vacating the unit on December 18, 2021 and that she did vacate the rental unit on December 18, 2021.

As the Tenant opted to vacate the rental unit after she applied to dispute the Two Month Notice to End Tenancy for Landlord's Use, I find that she abandoned her claim to dispute the Notice. I find that the Tenant has failed to establish that the nature of the emails sent to the Tenant were such that she needed to move out of the rental unit because her safety was at risk. As the Tenant abandoned her claim to dispute the Two Month Notice to End Tenancy for Landlord's Use, I find that there is no need for me to determine whether that Notice should be set aside or cancelled.

As there is no evidence that the Landlord entered the rental unit without lawful authority or that the Landlord intended to enter the rental unit without lawful authority, I find that the Tenant's decision to apply for an Order restricting the Landlord's right to enter was unnecessary.

As there was no need to replace or repair the clothes dryer when this Application for Dispute Resolution was filed, I find that there was no need to apply for an Order requiring the Landlord to make that repair.

I find that the Tenant has submitted insufficient evidence to establish that the fridge, the stove, or the front entry required repairs. In reaching this conclusion I was heavily influenced by the absence of any evidence, such as photographs, that supports her submission that those areas needed repair. When a tenant files an application seeking an Order for repairs, the burden of proving repairs are needed rests with the tenant.

As there is insufficient evidence that the Landlord failed to make necessary repairs, I find that the Tenant has failed to establish that her decision to apply for an Order requiring the Landlord to make repairs was reasonable.

As the Tenant abandoned the application to cancel the Two Month Notice to End Tenancy for Landlord's Use and she has failed to establish the merit of her decision to apply for the remainder of the claims in her Application for Dispute Resolution, I dismiss

the Tenant's application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Tenant's application to recover the fee for filing this Application for Dispute Resolution is dismissed.

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: March 14, 2022

Residential Tenancy Branch