



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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DECISION

Dispute Codes OPC OPR FFL CNR CNC RP PSF

Introduction

The tenant applied to dispute two notices to end tenancy pursuant to sections 46 and 47 of the *Residential Tenancy Act* ("Act"). In addition, the tenant sought an order for the provision of services of facilities (section 62) and an order for repairs (sections 32 and 62). By way of cross-application the landlord seeks orders of possession based on the two notices to end tenancy, and they seek to recover the cost of the filing fee.

Attending the dispute resolution hearing were the tenant, the landlord, a representative for the landlord (the son), and three witnesses for the tenant. The tenant was affirmed, no service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Tenancy is Ending

The tenant testified that he gave his notice to vacate the rental unit at the end of this month. That is, the tenant is to vacate the rental unit on August 31, 2022. The landlord's representative accepted the notice being given (though he admitted it was difficult to read the tenant's handwriting) and did not object to the tenant leaving at the end of the month.

Given the above agreed-upon end of tenancy date, the issue of whether the notices to end tenancy are valid is now moot. As such, it is hereby ordered, by the consent of the parties, that the tenancy shall end on August 31, 2022 at 1:00 PM. An order of possession of the rental unit reflecting this end of tenancy is issued to the landlord. A copy of the order of possession must be served by the landlord upon the tenant upon receipt of this Decision from the Residential Tenancy Branch.

As the end of tenancy date was agreed upon by the parties the landlord is not entitled to recover the cost of the application filing fee, pursuant to section 72 of the Act.

Issue

Is the tenant entitled to orders under sections 32 and 62 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the issue of this dispute, and to explain the decision, is reproduced below.

The tenant testified that there is a rat/mice and ant infestations of the two-bedroom basement suite. He would like the landlord to deal with the infestations. While the tenant intends to vacate the rental unit at the end of August, he is temporarily staying elsewhere.

The landlord's son testified that because the tenant has changed the locks to the basement suite (as authorized by previous RTB decisions on this issue) the landlord cannot enter the rental unit to assess the problem and figure out what to do.

The tenant does not dispute that the landlord cannot access the rental unit because the landlord does not have any keys. "Nothing is safe," from the landlord, the tenant remarked. The police have been called on the numerous occasions when the landlord has previously tried to enter the rental unit. Including, it would appear, for the purposes of the landlord using the tenant's living room as a church.

In summary, the tenant wants the landlord to take care of the rat/mice and ant infestations but is not prepared to permit the landlord entry into the rental unit. Conversely, the landlord cannot enter the rental unit because they do not have keys to the rental unit. The landlord has previously given the tenant written notice to enter the rental unit, but to no avail.

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.

In a nutshell, the tenant seeks an order or orders under [section 32](#) and [section 62](#) of the Act to solve the problem of a rat/mice and ant infestation.

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.”

While there may very well be a rat/mice and ant infestation, and while the landlord is required to maintain the property in a manner that meets health, safety, and housing standards required by law, and make it suitable for occupation, the tenant’s refusal to permit the landlord entry into the rental unit to deal with the infestation makes it all but impossible for the landlord to meet his obligations under section 32(1). Certainly, while the previous reasons for changing the locks are understandable—no tenant should have to share their living room with a landlord wishing to use it as a place of worship—the tenant must bear partial responsibility for permitting the landlord access to the rental unit. Until the tenant permits the landlord into the rental unit the landlord cannot adequately address the infestation.

Given the above, it is my finding that the tenant has not established an entitlement to any order being issued under sections 32 and 62 of the Act, and that aspect of his application is dismissed without leave to reapply.

On a final note, the landlord is advised that they are (pursuant to [section 25\(2\)](#) of the Act) entitled to change the locks, or rekey the locks, of the rental unit after the tenant has vacated the rental unit.

Conclusion

The tenant’s application is dismissed, in part, without leave to reapply.

The tenancy shall end, as noted above, on August 31, 2022 at 1:00 PM.

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

Dated: August 8, 2022

Residential Tenancy Branch