



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), to cancel a One Month Notice to End Tenancy for Cause dated June 22, 2022; and for an Order for repairs to the unit or property, having contacted the landlord in writing to make repairs, but they have not been completed.

The Tenant appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Landlord. The teleconference phone line remained open for over 25 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about it. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Landlord did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that she served the Landlord with the Notice of Hearing documents and her evidence by Canada Post registered mail, sent on July 13, 2022. The Tenant provided a Canada Post tracking number as evidence of service. I find that the Landlord was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenant in the absence of the Landlord.

Preliminary and Procedural Matters

The Tenant provided her email address in her Application and confirmed it in the hearing. The Tenant did not have an email address for the Landlord; therefore, I advised her that we will send the Decision to the Landlord by mail.

At the outset of the hearing, I advised the Tenant she is not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to an Order for repairs, and if so, which repairs?

Background and Evidence

The Tenant confirmed that the fixed term tenancy began on May 16, 2017, and ran to May 31, 2018, with a current monthly rent of \$1,350.00, due on the first day of each month. The Tenant said she paid the Landlord a security deposit of \$625.00, and no pet damage deposit.

One Month Notice

The Tenant submitted a copy of the One Month Notice, which was signed and dated June 22, 2022, and which has the rental unit address. The One Month Notice was served in person on or about June 22, 2022, with an effective vacancy date of July 7, 2022, which is automatically corrected by the Act to be July 31, 2022. The One Month Notice was served on the grounds that the rental unit must be vacated to comply with a government order; however, a copy of a government order is not in evidence before me. The Tenant said she has no idea what government order this might be.

When a tenant applies to cancel an eviction notice, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an order of possession if, first, I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the

tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding; however, the Landlord did not attend the hearing to present the merits of her position, nor did the Landlord provide any documentary evidence to support the One Month Notice. I find that the Landlord has not proven that she has a valid ground of eviction. As a result, I find the One Month Notice is not valid. I, therefore, **cancel the One Month Notice to End the Tenancy for Cause**, and I find that it is void and unenforceable.

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

Needed Repairs

In the hearing, the Tenant explained that the faucet in the kitchen sink is broken and that she has asked the Landlord for it to be repaired, but the Landlord has not done this yet. The Tenant submitted a copy of the text message dated May 14, 2022 that she sent to the Landlord with a photograph of the broken faucet, and her request for a repair.

I asked the Tenant what the Landlord has said about the her request for repairs, and the Tenant said:

The last day I saw her, I gave the rent, and I asked her to have the faucet fixed again. She had previously said she'd call a plumber, but on this day, she said she forgot. The next day she handed me the end of tenancy letter and that's the day I received it. She has no plan to repair it, but a plan to evict me.

I asked the Tenant how she is affected by the broken faucet, and she said:

The water is still there, but it wobbles – the base that's holding the faucet is broken. See in picture – totally broken. No water coming out, just totally cracked at the base. I can do dishes, but have to use both hands to open the faucet – just to open it, because the faucet will come along. It's quite uncomfortable to use the faucet.

The Tenant submitted a copy of the Parties' tenancy agreement and on page two at clause three of the tenancy agreement, it states that water is included in the rent, meaning that the Landlord must ensure the Tenant has access to the water in the kitchen, as well as elsewhere in the rental unit.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 32 of the Act requires a landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, which make it suitable for occupation by the tenant.

Based on the evidence before me including the Tenant's photographs of the faucet mechanism, I find that this fixture is more likely than not decades old, and that it has suffered from years of ongoing wear and tear. As such, and based on the evidence before me, I find the Tenant is not responsible for the damage to the faucet, and I find that the Landlord is responsible for having it fixed as soon as possible, pursuant to section 32 of the Act.

I ORDER the Landlord to have a licensed, qualified professional from a business in good standing in the community attend the Tenant's rental unit as soon as reasonably possible - and not more than 30 days after the date of this Decision - to repair the kitchen faucet in the residential property.

I also find that the Landlord was responsible for having the faucet repaired within a reasonable time after being advised of the damage. I find the Landlord's excuse of having forgotten is not a reasonable explanation for the faucet mechanism still being broken.

Section 65 of the Act states that if the Director finds that a landlord or tenant has not complied with the Act, the regulation or a tenancy agreement, the Director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy. I find that the Landlord has failed to comply with section 32 of the Act.

Based on the Tenant's testimony and evidentiary submissions, and based on common sense and ordinary human experience, I find that a kitchen faucet is something that a tenant would use multiple times every day. As such, I find it is an integral part of the residential property to a tenant, and I award the Tenant with a reduction of her rent of **\$100.00 per month** or approximately 7.5% of the rent, pursuant to section 65 of the Act.

I find that it would have been reasonable for the Landlord to have had the faucet repaired within a month of her being advised of its condition. However, as noted above, the faucet is still in disrepair six months after the Landlord was notified in writing of the Tenant's need for a repair. Accordingly, and pursuant to sections 65 and 67 of the Act, I award the Tenant with a **rent reduction of \$100.00 a month until the faucet is repaired.**

Further, given the time that has passed since the Landlord was made aware of this problem, and the lack of a reasonable reason for not having had it repaired, I find the Tenant should be compensated for the months beyond what was reasonable, in which she tolerated this disrepair. As such, I award the Tenant with **\$100.00 per month of rent reduction for July through November or \$500.00**, pursuant to sections 65 and 67 of the Act.

The Tenant is authorized to deduct \$500.00 from one upcoming rent payment in complete satisfaction of this award. The Tenant is also authorized to deduct an additional \$100.00 from rent in December 2022, if the faucet has not been fixed by December 1, 2022.

As noted again, the Tenant is authorized to deduct \$100.00 from each rent payment until the faucet is fixed.

Conclusion

The Tenant is successful in her Application to cancel the One Month Notice, as the Landlord failed to attend the hearing to present the merits of the One Month Notice. Further, the Landlord failed to provide evidence to explain the basis of the ground for the eviction. The **One Month Notice is cancelled** and is void and unenforceable. The tenancy will continue until ended in accordance with the Act.

The Landlord is ORDERED to have the kitchen faucet mechanism in the rental unit repaired by a qualified, certified professional, as soon as possible, and **not more than 30 days after the date of this Decision**

The Tenant is authorized to **deduct \$100.00 from every rent payment until** the faucet is repaired by a qualified, certified professional, as detailed above.

Further, the Tenant is **authorized to deduct an additional \$500.00 from one upcoming rent** for retroactive rent reduction to the time by which the fixture should

have been repaired. This represents a \$100.00 deduction for each month from July through November 2022.

As a caution to the Landlord, please note that the RTB now has a Compliance and Enforcement Unit (“CEU”) that ensures compliance with the residential tenancy laws of BC. From the CEU website it states: “When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties.” Further, in terms of financial administrative penalties that can be imposed, it states:

Should an administrative penalty be imposed, the person will be served with a notice of administrative penalty in the form of a decision and order that will specify the contravention or failure to which the penalty relates, the amount of the penalty and the date by which the penalty must be paid.

An administrative penalty is a debt due to government and must be paid within 60 days. Failure to pay will result in collection action being taken. In addition, the RTB may refuse to accept an application for dispute resolution if an outstanding penalty is owed.

For continued non-compliance, financial penalties of up to \$5000 per contravention per day may be levied. In addition, if any financial penalties are not paid the RTB can refuse applications to dispute resolution. The RTB may also publish CEU decisions, information may include the name and address of the person or business, the nature of the contravention, and the amount of the penalty.

[emphasis added]

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: November 10, 2022

Residential Tenancy Branch