



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC, OLC, FFT

Introduction

On November 24, 2022, the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by their Landlord on November 15, 2022. The Tenant also seeks the Landlord’s compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 31, 2023. Both parties attended the teleconference hearing.

Preliminary Matter – Tenant’s notification and evidence to the Landlord

At the start of the hearing, the Landlord confirmed they received the Notice of Dispute Resolution Proceeding from the Tenant, along with the Tenant’s “single sheet outlining [their] view” and a USB drive containing other evidence. With this confirmation, I find the Tenant disclosed their evidence to the Landlord as required; therefore, I give the Tenant’s evidence full consideration herein.

Preliminary Matter – disclosure of Landlord’s evidence

The Landlord provided documentation to the Residential Tenancy Branch on March 17, 2023; this was their evidence for this hearing. In the hearing, they stated that they provided this to the building manager, who was then supposed to forward the

documents to the Tenant. This was via email. The Landlord stated they had no response from the building manager on this.

The Tenant in the hearing stated they did not receive anything forwarded from the building manager.

I find the Landlord did not undertake service of their evidence in a manner compliant with s. 88, which lists specific ways to serve documents. Service of evidence to the other party is a basic requirement in this administrative tribunal setting. Without proof of service (required by Rule 3.16 of the *Residential Tenancy Branch Rules of Procedure*), I exclude the Landlord's evidence from consideration because it would be prejudicial to the Tenant if I consider the Landlord's evidence without it being disclosed to the Tenant.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement that sets out the basic terms. The tenancy started on January 1, 2022, with the rent amount set at \$800 per month payable. The Landlord in this matter was "handed responsibility about managing [this rental unit] in late October [2022]", as they stated in this hearing.

The agreement, as a standard template, provides on page 2 that the *Act* applies to all terms therein. Page 4 of the agreement sets out all terms that cover repairs, both the Landlord's and Tenant's obligations:

- Landlord: must provide the rental unit in a reasonable state of repair, suitable for occupation, if the Landlord refused to make a repair, the Tenant may seek a specific order from the Residential Tenancy Branch for the completion and/or costs of the repair

- Tenant: must maintain basic standards in the rental unit and must take necessary steps to repair damage caused by their own actions/neglect, not responsible for reasonable wear and tear. If the Tenant does not comply with their obligations, the Landlord may seek a monetary order via the Residential Tenancy Branch for the cost of repairs, and/or serve a notice to end tenancy.

The Landlord issued the One-Month Notice on November 15, 2022. They served this to the Tenant via the building manager who served this to the Tenant on November 15. In the hearing, the Tenant specified this was a two-page document; in their evidence they provided an image of each page. This set the end-of-tenancy date on December 15, 2022.

The reasons provided on page 2 of that document are:

- ☐ Tenant or a person permitted on the property by the tenant has:
 - ☐ put the landlord's property at significant risk
- ☐ Tenant has not done required repairs of damage to the unit

The Landlord provided the following details on page 2 of the document:

Tenant accidentally broke shower surround, Revealed significant water damage behind [the shower surround] once exposed. [The Tenant's] Temporary Repair not sufficient. Bathroom requires full-scale stud-out renovation to fix problem.

In the hearing, the Landlord set out how they took over the responsibility for this rental unit in October 2022. At that time, they did a unit-by-unit inspection at the rental unit property. In this rental unit, upon their visit, they learned that the Tenant slipped and fell in the shower the evening before. The Landlord was informed by the building manager that "a repair would happen", and the Landlord accepted that a repair was in the works.

Approximately one week later, as recalled by the Landlord in the hearing, they received a message from the building manager asking for a repair to this specific damage, where the Tenant's fall had damaged the sealant around the edge of the bathtub.

The Landlord had a contractor visit on November 2. They removed the sealant around the edge of the bathtub and inspected the walls, noting water damage on the drywall. The contractor recommended removing the tub surrounding, removing the drywall for its' replacement, and replacing the "poly" (*i.e.*, polybutylene) piping. The contractor advised that this work required a permit; therefore, it was not an immediate job.

According to the Landlord, the Tenant called the next day (on November 3 or 4), and the Landlord was trying to assess options. Their primary issue was water damage. The Tenant notified the Landlord they had come up with a temporary solution enabling their continued usage of the shower; the Landlord, after discussion, determined the Tenant was not being cooperative with the needed repair.

According to the Tenant, they contacted the building manager about the immediate issue, and the building manager brought materials to temporarily fix the issue. With the building manager, the Tenant planned to fix the issue properly in the following week. By November 1, the building manager advised that the Landlord was not happy with the issue and required the Tenant to pay a contractor for a proper fix.

The Tenant alternately volunteered to temporarily fix the problem to save on costs; further, they consulted with a friend who provided a job amount of \$1,200 to \$1,500 for their work. This was limited to the issue of the tub surrounding, and not including any other work.

As reported by the Tenant in the hearing, this left the Landlord with the impression that the Tenant was lying about the matter, and the Landlord threatened eviction for the following month.

The Landlord in the hearing reiterated that there is a larger water damage issue that needed to be addressed; however, their issue with the Tenant here was for cooperation and availability to get the immediate issue of fixing the bathtub. According to the Landlord "at every turn [the Tenant] is trying to make it difficult." They cited the Tenant's lack of disclosure on their friend's name, a business license for that individual, and details on the cost and scope of work.

Analysis

In all matters concerning an end of tenancy, the Landlord bears the burden of proof to show that a notice to end tenancy is valid, complete, and served in the appropriate manner.

The *Act* s. 55 states, in part:

- 55** (1) 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 *Act* s. 52 states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) ... state the grounds for ending the tenancy,
... and
- (e) when given by a landlord, be in the approved form.

In this hearing, the Tenant provided images of page 1 and page 2 of the One-Month Notice document. The document does not include the third page, with page 1 highlighting the need for this third page, in particular, because it contains important information about the process and other information about the Tenant's legal rights in this situation. In the hearing, the Tenant confirmed they received a 2-page document. I cannot determine on the Landlord's behalf that they indeed served a 3-page document, in the approved form to the Tenant. I find both these elements are strictly required, to be precise on the ending of the tenancy, and are both specifically set out in s. 52.

Because the document does not meet the requirements of s. 52, the Landlord did not meet the burden of proof to show they complied with condition of s. 55(a).

For these reasons, I order the One-Month Notice is cancelled. I find the One-Month Notice, issued by the Landlord on September 1, 2022, does not comply with the requirement set out in s. 52(e).

My conclusion above does not touch upon the reasons the Landlord issued the end-of-tenancy notice.

The Tenant applied for a ruling on the Landlord's compliance with the tenancy agreement and/or *Act*, as relevant. On the basis of the Landlord serving an end-of-tenancy to the Tenant concerning an issue of repair in the rental unit, the situation as of the time of the hearing was unresolved.

The Landlord was not satisfied with the Tenant's temporary solution to the problem. The Tenant rather summarily in the hearing stated that the Landlord was doing nothing to repair the problem. Based on both parties' descriptions, I find the Tenant must accommodate more substantive repairs because I find the Landlord credible on the information they presented about a deeper issue needing to be addressed in the rental unit.

To be clear: I find the need for deeper repairs arose not through the Tenant's neglect or other actions, and I didn't see that particular accusation from the Landlord, who on the One-Month Notice did indicate that it was something accidental that jarred the problem into existence. Moving forward, each party has obligations to attend to the issue.

I find what is in place is the tenancy agreement reflects what is set out in the *Act* section 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.
- 3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- 4) A tenant is not required to make repairs for reasonable wear and tear.

I find this was not a situation where the positive duty to repair the tub area immediate damage was set on the Tenant, because I accept the statements of both parties that it was an accident that caused the problem with the tub surrounding. However, the communication became fuzzy where the Tenant and the building manager appeared to take on the role by coming up with a temporary fix. This led to difficulties in communicating clearly with the Landlord.

I relieve the Tenant of the duty of undertaking repairs, either immediate or any necessary deeper repairs. The Tenant must communicate that clearly to the building manager. Both the Tenant and the building manager may think they are helping in the situation; however, it remains unresolved, and there is a strong possibility of more deep-rooted damage in the building that the Landlord must address. Indeed, it is the Landlord's obligation to do so.

The Tenant must assist and cooperate with the Landlord to have all repairs in the bathroom completed. Should the Tenant not accommodate this, that very legitimately could serve as grounds for the Landlord ending the tenancy. Alternatively, should the Tenant impede repairs, that may constitute significant interference or unreasonable disturbance to the Landlord.

The Landlord is obligated to complete repairs, and the Tenant must accommodate this to give effect to the Landlord's obligations. The Tenant cannot, at this stage, turn around and state the Landlord is neglecting repairs.

The Landlord must examine their options to give effect to the needed repairs. I note that for the purposes of having a unit vacant for these purposes, there is a process set out in s. 49.2 of the *Act* requiring an order authorizing vacancy for repairs or renovations.

This is past the point of negotiation, and the Tenant must cooperate with any plan the Landlord has to repair the issues in the bathroom. They must work with the Landlord to find possibilities for any other accommodation necessary to have repairs completed. If remaining in the rental unit is the only option, they must accommodate repairs in order to ensure the most expedient means possible.

In sum, I order the Tenant to comply with any plan of the Landlord for repairs in the bathroom of their rental unit; this is in line with the special clause in the agreement that the Tenant must maintain basic standards in the rental unit. The Landlord has an obligation to attend to needed repairs in the rental unit, and the Tenant must not block or otherwise hamper the Landlord's efforts. The Tenant has no separate rights or obligations for these particular repairs, and they must allow the Landlord to manage this going forward. I make this order under the authority of s. 62(3) of the *Act*.

As the Tenant was successful in this Application regarding the One-Month Notice, I find the Tenant is entitled to recover the \$100 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice is cancelled the tenancy remains in full force and effect.

As set out above, I find the Landlord has the positive obligation to complete repairs in this rental unit. The Tenant is obligated to assist and not impede the Landlord in their efforts.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 12, 2023

Residential Tenancy Branch