



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC LRE FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant. The participatory hearing was held, via teleconference, on May 29, 2023.

The Landlords (agents of) and the Tenant both attended the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in the application deals with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to

reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 1-Month Notice for Cause (the "Notice").

Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
 - If not, are the Landlords entitled to an Order of Possession?

Background and Evidence

The landlords issued the Notice for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

The Tenant acknowledged receiving the Notice on October 30, 2017. Under the "Details of Cause" section on the Notice, the Landlord only stated "the Tenant has repeatedly denied access to the rental unit after proper notice has been issued to allow tradespeople to complete the repairs". The Landlords explained that they are simply trying to complete repairs to a failing tiled shower surround that is over 40 years old, and the Tenant has been obstructive and unreasonable in his refusal to allow the repairs to complete.

Both parties provided detailed documentary packages showing the communications had over the past year or more relating to the issue with the tiles in the shower. There are also numerous photos and inspection reports provided by the Landlord showing the nature of the shower issue, and the temporary fix that was installed.

More specifically, the Landlord stated that they were first made aware that a few tiles in the tub/shower surround were detaching from the substrate on or around November 25, 2021. The Landlord has attended the unit several times, and wishes to remove the tiles, and backer board, and replace with new tiles, and also repaint the bathroom. The Landlord opines that this is simply a repair, and not a major renovation. The Landlord stated that around August 17, 2022, they put up a waterproof membrane (temporary)

over the failing tiles, and it has remained this way since that time. The Landlord is concerned that there is moisture buildup and that the Tenant's refusal to allow the repairs is going to cause internal damage to the walls due to moisture. The Landlord pointed to a photo taken recently showing some appearance of moisture behind the waterproof barrier in the shower.

The Tenant opined that the waterproof membrane is still keeping all water off the affected area, and he denies that there is any significant risk to property. The Tenant asserts that this is a major renovation, and he is not required to provide access to the Landlord so that they can do such a renovation. The Tenant pointed to his right to quiet enjoyment, as well as the fact that this is not an emergency repair. The Tenant is concerned the shower repair will be disruptive. The Tenant does not refute that he has prevented the Landlord from doing the shower repairs, and asserts the Landlord has no lawful basis to do the repairs without his permission. The Tenant asserts the Landlord is not entitled to do non-emergency repairs.

Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note that the relationship between the parties has not improved since the Notice was issued. However, my focus in this hearing is whether the Landlord had sufficient cause to end the tenancy, at the time the Notice was issued.

I turn to the Notice issued by the landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on February 16, 2023, and applied to dispute it the following day.

I have considered the totality of the situation leading up to the issuance of the Notice. However, I do not find the current situation with the tiles in the shower is such that it represents a significant risk to the Landlord's property. I acknowledge that repairs are needed. However, I also note that there is currently a functional waterproof membrane over the small affected area in the shower. I also find it more likely than not that this has been an ongoing issue that has worsened over many years, rather than an emergent and extremely time sensitive issue, which poses a significant risk to the property. I do not find the Landlord has sufficiently demonstrated that the Tenant's actions pose a significant risk to the property, especially considering there is insufficient evidence that

the current waterproof membrane is not serving its purpose, to keep the affected area reasonably dry.

I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on February 16, 2023, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

That being said, I do not find the Tenant is being reasonable. Although I do not find there is sufficient evidence that there is currently a significant risk to the property, this could change, if the Tenant continues to prevent access and if the temporary fix becomes compromised, and there is potential for a new Notice to be issued if the situation worsens. I do not agree with the Tenant that this is a major renovation, and I find the scope of repairs sought by the Landlord is reasonable (to replace the backer board, the tile, and do some painting) especially since the shower is over 40 years old.

Although the Tenant is concerned about the impact of the repair work on his quiet enjoyment, I find this does not allow the Tenant to obstruct the repairs. The Tenant's entitlement to quiet enjoyment must be balanced with the Landlord's right to maintain the unit, and perform reasonable repairs. I find the repairs are reasonable, and the requests for access and related timelines are reasonable, generally speaking. The current temporary membrane installed to prevent further damage is obviously not a long term solution, and I accept that the Landlord would reasonably like to address this in a more permanent manner.

I find the Landlord is entitled to make repairs to the rental unit, provided the repairs are reasonable, and provided the Landlord complies with section 29 of the *Act* in terms of access. The relevant portion of that part of the *Act* is provided for reference:

Landlord's right to enter rental unit restricted

29 (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I encourage the parties to try to work together and come to an agreement if possible, prior to filing any future applications.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: May 31, 2023

Residential Tenancy Branch