



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, RP, RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and an order to have the landlord make repairs and reduce rent.

The hearing was conducted via teleconference and was attended by the tenant and the landlord

The landlord testified that the tenant only served him with the notice of hearing documents and not the details of the dispute on her Application for Dispute Resolution. The tenant testified that she believed that she had served the landlord with all the required documents.

I proceeded with the hearing and heard testimony from both parties, I am satisfied the landlord was sufficiently aware of the details of the dispute and was adequately prepared to deal with all matters in the Application.

While the tenant's Application included a claim for return of the security deposit based on her position that the landlord had failed to complete a move in inspection of the rental unit, I advised both parties that the landlord has the right to hold the deposit as a security against any liability resulting from the tenancy and that it would be inappropriate to return the deposit at this time. With the tenant's agreement I amended her Application to exclude the matter of the security deposit.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss; to an order requiring the landlord to complete repairs and to reduce rent for those repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant provided into evidence the following documents:

- A copy of a tenancy agreement signed by the parties for a month to month tenancy beginning on July 1, 2012 for a monthly rent of \$1,500.00 due on the 1st of each month with a security deposit of \$750.00 paid on June 15, 2012; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on October 16, 2012 with an effective date of November 30, 2012 citing the tenant is repeatedly late paying rent; that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; and the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The landlord submits that the tenant has been repeatedly late paying rent since the start of the tenancy, specifically he states rent for July 2012 was paid on the 7th; for August 2012 paid on the 3rd; for September 2012 paid on the 5th; and for October paid on the 2nd.

The tenant testified that the landlord came by on July 2, 2012 to pick up the rent on that date and that with the exception of October 2012 the rent had been left in the mailbox as instructed by the landlord on the 1st.

The tenant acknowledges that she withheld the payment of rent for October because of the landlord's failure to complete repairs but then paid immediately when she contacted the Residential Tenancy Branch and was told she could not withhold rent for this purpose.

The tenant has provided copies of her rent cheques that show the dates negotiated through the banks as follows:

July – negotiated July 4, 2012
August – negotiated August 7, 2012
September – negotiated September 4, 2012
October – negotiated October 4, 2012

The tenant submits that shortly after moving in the dishwasher caused a flood to the unit below the rental unit as a result of a pipe that burst. The landlord submits that the damage to the pipe was caused by tenant's deliberately jamming something in the dishwasher that caused it to rupture a pipe.

The parties agree that it took some time for the landlord to affect the repair of the dishwasher. The landlord testified that because of his work he is taken out of town for extended periods.

The tenant testified she had requested, in a letter dated October 31, 2012 submitted into evidence, the landlord repair the lock to the patio doors that broke when they were accessing the patio the day before.

The landlord submits that these items were in perfect working order prior to the start of the tenancy and as a result of the tenant's they have now been damaged. The landlord submits that these are the reasons he cited the tenant ha put the landlord's property at significant risk in the Notice to End Tenancy.

The landlord testified that despite checking off the box on the Notice to End Tenancy that the tenant has engaged in an illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord he is not claiming the tenant has engaged in any illegal activity, he just did not realize that the notation of the illegal activity was attached to the point of jeopardizing his lawful rights.

As a result of the landlord's delay in fixing the dishwasher within a reasonable timeframe the tenant seeks compensation in the amount of \$100.00 per month for the 3 months that she did not have an operating dishwasher.

The tenant also submits that despite requesting repairs for some mould problems in the bathroom and the landlord's attempt to cover up the mould the tenant submits the problem still exists. The landlord testified that he cleaned the area with a mould killing agent and primed the area with a primer that is developed specifically for covering and killing mould.

The tenant also submits that there is a hole in the drywall where the landlord had removed the drywall to see if he could remove the wall to open up the space but that he has not completed repairs to the wall which has left wires exposed. The tenant provided pictures of this area with a piece of drywall in place and with the piece of drywall removed showing wires running through the wall. The landlord submits that this is small area of drywall and is not causing any danger to the tenant.

For these two issues the tenant seeks an order to have the landlord make these repairs; for compensation of \$50.00 per month from the start of the tenancy and for a rent reduction in the same amount until these repairs are made.

Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Put the landlord's property at significant risk; or
- c) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- i. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

When determining if a landlord has cause to end a tenancy for the reasons cited above and in the 1 Month Notice to End Tenancy issued by the landlord the burden is on the landlord to provide sufficient evidence to establish that he has sufficient cause to end the tenancy.

In relation to the landlord's cited cause, on the 1 Month Notice, that the tenant has engaged in an illegal activity as the landlord has confirmed the tenant has not engaged in any illegal activity I find the landlord has not established this as a cause to end the tenancy.

In the case before me the landlord submits the tenant was late paying rent each month with the exception of the month of November 2012, after the 1 Month Notice was issued. From the testimony provided by both parties I find that there were no specific written instructions provided to the tenant on how she was suppose to get rent to the landlord. Having said this I note that it is the tenant's responsibility to ensure the landlord receives the rent payments on or before the day they are due according to the tenancy agreement.

Despite the landlord's testimony that tenant had been late for each of the months of July, August, September and October 2012, I note that for July he states he received the rent on July 7, 2012 and yet the negotiated cheque shows that it was negotiated on July 4, 2012 and the landlord testified the cheque for September, 2012 was received by him on September 5, 2012 yet it is showing as negotiated on September 4, 2012.

As such, for at least two of the occasions the landlord states he received the rent late I find his testimony is contrary to the dates as confirmed by the tenant's documentary evidence and therefore, I find I cannot rely on the landlord's testimony to establish the tenant has pay rent late for those two occasions.

Therefore, I find the landlord has failed to establish a pattern of repeated late payment of rent. However, I find it is possible the tenant may have been late on the two other occasions and as such the tenant should consider herself sufficiently warned the landlord may have cause to end the tenancy if she is late paying rent again, in accordance with the Residential Tenancy Policy Guideline #38 that states 3 late rent payments maybe sufficient for a landlord to have cause to end the tenancy.

As to the landlord's cited cause of putting the landlord's property at significant risk, I find the landlord has failed to provide any evidence that the problems with the dishwasher or the patio door locks were caused by the tenant.

While I acknowledge the both problems were identified after the tenant had moved in to the rental unit, by failing to complete a move in inspection and a subsequent report the

landlord cannot provide any evidence to establish the condition of either the dishwasher or the patio door locks prior to the start of the tenancy.

Therefore, I find, in the absence of any other documentary evidence to support his statements, the landlord has failed to establish the tenant has put the property at significant risk.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

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

As noted above the landlord has provided no evidence to establish the tenant was responsible for damaging the dishwasher and as such I find it was the landlord's responsibility to repair it.

As a result of the landlord's inability to repair the dishwasher in a timely, despite his work obligations, I find the tenant suffered a loss in the value of the tenancy for the duration of time it took the landlord to repair the dishwasher. Therefore, I find the tenant is entitled to compensation in the amount of \$300.00 as claimed for this loss in value.

In relation to the tenant's claim for compensation for mould and drywall repairs and for an order to have the landlord complete these repairs as well as a reduced rent until the repairs are complete, I find the tenant has failed to establish these issues as being required. I find the tenant has not provided any evidence of a mould problem that continues to exist in the rental unit.

I also find that despite there being a hole in the wall with wires running through the wall the tenant is not in any danger from those wires whether they are exposed or behind drywall and the hole is sufficiently insignificant that it has no impact on the value of the tenancy. Therefore I dismiss the tenant's claim for compensation for and any order to have the landlord complete these repairs or reduce rent until completed at this time.

Conclusion

For the reasons noted above, I find the 1 Month Notice to End Tenancy for Cause issued by the landlord on October 16, 2012 is ineffective and the tenancy will continue to be in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$350.00** comprised of \$300.00 compensation for loss in value of the tenancy resulting from an unrepaired dishwasher and the \$50.00 fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment in accordance with Section 72(2)(a) satisfaction of this claim.

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: December 4, 2012.

Residential Tenancy Branch