



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OPL FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;
- b) To recover the filing fee for this application.

This hearing also dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- c) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49 as it is in bad faith to avoid repairs;
- d) To order the landlord to do necessary repairs pursuant to sections 32 and 33;
- e) For compensation for lack of repair, loss of quiet enjoyment contrary to section 28 and for breach of the tenancy agreement and to recover filing fees for this application.

Service:

The Notice to End Tenancy is dated November 21, 2014 to be effective January 31, 2014 and the tenant confirmed it was served by posting it on the door. The parties gave evidence of receiving each other's Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing.

Preliminary Issue:

The landlord requested an amendment to add another party's name as tenant to the Application; the tenant had no objection so the amendment was granted.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and he is entitled to an Order of Possession or is the tenant entitled to any relief? Is the landlord entitled to recover the filing fee?

Has the tenant proved on the balance of probabilities that the landlord's Notice to End Tenancy is in bad faith to avoid repairs? Have they proved that the landlord through act or neglect has failed to repair and that they are entitled to compensation for lack of repair and loss of their peaceful enjoyment and if so, to how much have they proved entitlement? Should the landlord be ordered to do repairs?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in July 2013, it is now a month to month tenancy, rent is \$1277 a month and a security deposit of \$675 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

- a) The landlord requires the property for their own use for occupancy by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The landlord provided evidence that his daughter wants to move into this unit. He said she had been living for 12 years in a different municipality but he is elderly and wants her close to him now. He provided evidence that she talked to a realtor in May, 2014, but sold her home with final conditions removed on November 20, 2014 and served the Notice to End Tenancy on these tenants on November 21, 2014. Meanwhile she is living with her sister on a short term lease expiring on January 31, 2015 when she wants to move into this property. He asks for an Order of Possession.

The tenant disputed the landlord's intention; she questioned the timing of the Notice as they had had significant problems with their plumbing and it was after the Strata met and decided they needed to take more time to address the plumbing issues, that the landlord served the Notice to End Tenancy. She also questioned why the daughter would want to move to a different municipality and wondered why one of the landlord's other units would not suit her instead. She said there was no information as to why the landlord had chosen their suite which made his intentions suspect as they were having so many problems with plumbing repair.

Many documents and emails were submitted as evidence. The parties agree that there were significant plumbing problems in this strata complex, not just in this unit. The evidence of emails and strata minutes show that there was a problem with the PVR balancing and the residents were experiencing erratic fluctuations of hot and cold water from November 2013 to date. On several occasions, the tenants had very hot water in the toilets and had to be extremely careful not to scald themselves because of the very

hot temperatures in the showers and sinks. Apparently August was particularly bad because the hot water contributed to excessive moisture and temperature in the unit. The tenants request compensation for the devaluation of their tenancy and the neglect of the landlord in addressing the problem adequately. Both parties submitted many emails on the subject as evidence. The tenants request compensation of \$2,633.30 detailed as follows:

November 2013: \$187.50 for insufficient hot water: 15% of rent or \$187.50 total.

December 2013 to July 2014 fluctuations causing discomfort and minor disruption:
7.5% abatement for 8 months or \$750.

August 2014: Amounts claimed but acknowledged settled with landlord for \$120 reduction.

September and October 2014: 20% abatement each month for landlord's neglect in addressing issue and 20% each month for fluctuating, dangerously high temperatures in hot water (total \$1000 for both months)

November 2014: 20% abatement r \$255.40 plus 20% for landlord's neglect (total \$510.80)

December and January : same as November for still not resolved.

The landlord acknowledged the problems but submitted minutes and emails to show it was a whole building problem that they could not fix themselves. They were advised not to do further repairs as the new valves were failing within a couple of weeks and the strata had hired an engineer to work on the flow problems. The tenant noted that repair persons had come to their suite and adjusted something outside their suite which worked for one or two days. When a valve was replaced, it failed again very quickly. They emphasized how uncomfortable the conditions were in their two bathrooms in sinks, showers and toilets. A plumber came in August to make adjustments, they asked for a rent abatement for August and received \$120 in settlement; on September 16, the problems resurfaced and continued to date. The tenants accuse the landlord of neglect in not addressing the problems promptly.

The landlord submitted emails in evidence showing they received over 20 emails in September 2014 and approximately 38 in October from the tenant. They provided emails showing their agent followed these up with requests to the strata in a timely fashion e.g. August 25, 2014 asking that this unit be listed as requesting immediate replacement of the shower mix valve and noting the unpleasant conditions of the tenants, on September 2, 2014 and September 16, 17 and 25, 2014 asking for updates for timing of repairs, asking if they could replace the shower faucet cartridges themselves. The strata replies indicate that the landlord could not do these requested repairs because of the adjustment needed in the entire building and the need for an

engineer to address the problem. On October 29, 2014, the strata replied directly to the tenant saying they were working with several owners and the plumbers to address the problems.

Included with the evidence is the Notice to End Tenancy, many emails, strata minutes, proof of sale of the daughter's home and of her residency there, a short term tenancy agreement signed by her and statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the s. 49 reason cited, namely, that he required the property for his daughter's occupancy. Although the tenant questioned the intent of the landlord and the timing of the repair issues coinciding with the Notice to End Tenancy, I find the landlord's evidence is well supported by the documents showing the daughter's sale of her former home, the fact that the landlord is elderly and needs his daughter located near him and that she has had to live temporarily with her sister. I find the evidence supports the landlord's submission that his primary motive in ending this tenancy is so that his daughter may occupy this unit and be close to him. I dismiss the Application of the tenant to set aside the Notice and find the landlord entitled to an Order of Possession effective January 31, 2015 when the tenancy is ended.

In respect to the tenants' claims for devaluation of the tenancy, neglect of the landlord and loss of their peaceful enjoyment, I find their evidence credible that they have had significant disruption of their tenancy through the fluctuation of the hot and cold water as it is supported by the evidence of the landlord also. However, I find the weight of the evidence is that the landlord did not through act or neglect fail to address the problem. I find the landlord and his agent provided evidence of their emails to the strata stressing the urgency of the issues over several months but they could not do more as the strata stressed many times that it was a building wide issue and it had to be solved by a mechanical engineer. While the strata may not have acted quickly enough for the tenants, I find this was not the result of neglect or inaction of the landlord so I dismiss the tenant's claims for extra compensation for neglect of the landlord breaching their contract.

However, I find the fluctuating hot and cold water significantly disrupted their peaceful enjoyment and devalued their tenancy. Their rent was \$1250 a month until November and is now \$1277 a month. I find they had the full use of their two bathrooms during the whole time but had some discomfort and danger from excessively hot water. Some of the months had major disruptions and some 'minor' as quoted by the tenant. I find the weight of the evidence is that beginning in November, 2013, they lost peaceful enjoyment and their tenancy was devalued for variable intervals in many months but they had also times when there were not problems. Taking into account that the problems were not caused by the landlord's act or neglect, I find it reasonable to allow the tenants for devaluation of the tenancy, 10% abatement of rent per month from November 2013 to July 2014 ($\$125 \times 9 = \$1,125$) and from September 2014 to January 2015.: ($\$125 \times 2 = 250$) and ($127.70 \times 3 = \383.10). Total allowance is \$1758.10.

The parties were advised that the landlord must also pay one month's rent refund to the tenant on or before the last day of the tenancy pursuant to sections 49 and 51.

Conclusion:

I find the landlord entitled to an Order of Possession effective January 31, 2014 and to recover his filing fee for this application. The landlord's filing fee will be recovered through reduction of the tenant's allowance.

I find the tenant entitled to a monetary order as calculated below and to recover their filing fee for this application.

Nov. 2013 to July 2014 abatement 10%	1125.00
Sept. 2014 to October 2014 – 10%	250.00
November 2014 to January 2015- 10%	383.10
Filing fee	50.00
Less filing fee to landlord	-50.00
Total Monetary Order to Tenancy	1758.10

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: January 08, 2015

Residential Tenancy Branch

