



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEORGE KANG AND SONS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC MNDC OLC RP RR FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated August 24, 2017 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated August 16, 2017 (the "One Month Notice");
- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property;
- an order that rent be reduced for repairs, services or facilities agreed upon but not provided; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by D.M., an agent. Both the Tenant and D.M. provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Application package and subsequent documentary evidence was served on the Landlord by registered mail. D.M. acknowledged receipt on behalf of the Landlord. In addition, D.M. testified that the Landlord's documentary evidence was served on the Tenant by registered mail. The Tenant acknowledged receipt. No further issues were raised with respect to service or receipt of the documents upon which the parties intended to rely. I find the parties were sufficiently served with the above documents for the purposes of the *Act*, pursuant to section 71 of the *Act*.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony put before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address during this hearing was whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request to cancel the One Month Notice and to recover the filing fee paid to make the Application. The Tenant is granted leave to reapply for the remainder of the relief sought at a later date, as appropriate.

Issues to be Considered

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed the tenancy began in 1994. Currently, rent in the amount of \$983.00 per month is due on the first day of the month. The Tenant recalled paying a security deposit of \$300.00 at the beginning of the tenancy.

On behalf of the Landlord, D.M. testified the One Month Notice was issued on the bases that the Tenant has put the Landlord's property at significant risk, or has caused extraordinary damage. Specifically, D.M. testified that the rental property is old, but that decks were replaced in 2012. She confirmed the decks are open to the elements and are pitched away from the building. However, D.M. suggested that the presence of a number of plants on the Tenant's deck, and her use of excessive amounts of water when washing the deck, has resulted in water ingress to the rental unit below and moisture penetrating below the vinyl surface of the deck. D.M. opined that the water did not drip off the outer edge of the deck and into the rental unit below; rather, she suggested the excessive water used when washing the deck infiltrated the space between the stucco siding of the building and the vinyl deck surface. The Landlord also advised of complaints of water dripping onto other tenants as they access the rental property through a door below the Tenant's deck.

In support, D.M. referred to a report, prepared by a building inspector, dated August 9, 2017. The author recommended removal of the Tenant's plants to allow a contractor to "fully evaluate" the condition of the deck. The author also concluded that the deck was stable, despite the increased "dead load factor" caused by the plants.

In reply, the Tenant acknowledged she washes the deck but that it is her responsibility to properly maintain her rental unit. She testified the deck is open to the wind and rain, which persist for much of the year. An example of a storm the night before the hearing was provided, which the Tenant testified left the deck soaked. The Tenant suggested that rain water is as likely a source of any issues.

In addition, the Tenant testified there have been numerous issues with the building envelope during the tenancy, and that there are regular issues with pipes in the building. These assertions were not disputed by D.M.

Finally, the Tenant submitted that all of D.M.'s testimony is based on assumptions, but that no evidence the Tenant is the cause of the issue was presented.

Analysis

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

Section 47 of the *Act* permits a Landlord to end a tenancy for cause in the circumstances described therein. In this case, the Landlord issued the One Month Notice on the bases that the Tenant has put the Landlord's property at significant risk, or has caused extraordinary damage. I find there is insufficient evidence before me to conclude the Tenant's actions are the cause of moisture below the vinyl surface, or of water ingress to the rental property. More specifically, I find there is insufficient evidence before me to conclude that the Tenant's actions put the Landlord's property at significant risk or caused extraordinary damage. The deck is exposed to the elements and is located in an area with considerable precipitation. In addition, both D.M. and the building inspection report submitted confirm the deck is pitched away from the building to permit drainage. No evidence was offered with respect to the frequency of washing by the Tenant, or of the amount of water used. Accordingly, I find the One Month Notice is cancelled and order that the tenancy will continue until otherwise ended in accordance with the *Act*.

As the Tenant has been successful, I find the Tenant is entitled to recovery the \$100.00 filing fee paid to make the Application. This amount may be deducted from a future rent payment, at the Tenant's discretion.

Conclusion

The One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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 15, 2017

Residential Tenancy Branch