



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT, PSF
 FFL, MNDCL-S

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on September 8, 2018, the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on August 30, 2018 (the "Notice"), monetary compensation from the Landlord, an Order that the Landlord provide services and facilities as required by law, and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on September 15, 2018, the Landlord requested monetary compensation from the Tenant and to recover the filing fee.

The hearing was conducted by teleconference at 9:30 a.m. on October 25, 2018.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters—Address of the Rental Unit

The parties agreed that the subject rental unit is situated in the lower level of an up down duplex. Neither party made this clear on their Application for Dispute Resolution.

Pursuant to section 64(3)(c) of the *Act* I amend their Applications to include “Lower” to specifically identify the rental unit.

Preliminary Matters—Tenant’s Names on Application

The Tenant named his children as Applicants/Tenants on his Application for Dispute Resolution. Pursuant to section 64(3)(c) of the *Act* I amend the Tenant’s Application to remove his children’s names from the Application.

Preliminary Matters—Issues to be Decided

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as a tenant’s request for emergency repairs or the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claims before me are the validity of the Notice and the Tenant’s request for an Order that the Landlord provide services or facilities. I find that these claims are not sufficiently related to the parties’ monetary claims; accordingly I exercise my discretion and dismiss the parties’ monetary claim with leave to reapply.

Preliminary Matters—Delivery of Decision

The parties confirmed their email addresses during the hearing. The parties further confirmed their understanding that this Decision would be emailed to them and that any applicable Orders would be emailed to the appropriate party.

Issues to be Decided

1. Should the Notice be cancelled?
2. In the even the Notice is cancelled, and the tenancy continues, should the Landlord be required to provide services or facilities?
3. Should either party recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure—Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently the Landlord presented their evidence first.

Introduced in evidence was a copy of the residential tenancy agreement confirming that this tenancy began June 1, 2018. The Landlord, S.W., testified that the Tenant moved in a day early on May 31, 2018.

The tenancy agreement fails to indicate the monthly rent payable although the Landlord testified it was \$1,600.00 per month. The following is noted as included in the monthly rent payment:

<input checked="" type="checkbox"/> Water	<input type="checkbox"/> Natural gas	<input checked="" type="checkbox"/> Garbage collection	<input type="checkbox"/> Refrigerator	<input type="checkbox"/> Carpets
<input type="checkbox"/> Cablevision	<input type="checkbox"/> Sewage disposal	<input checked="" type="checkbox"/> Recycling services	<input type="checkbox"/> Dishwasher	<input checked="" type="checkbox"/> Parking for 3 vehicles
<input checked="" type="checkbox"/> Electricity	<input type="checkbox"/> Snow removal	<input type="checkbox"/> Kitchen scrap collection	<input checked="" type="checkbox"/> Stove and oven	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Internet	<input type="checkbox"/> Storage	<input type="checkbox"/> Laundry (coin-op)	<input type="checkbox"/> Window coverings	<input type="checkbox"/> Other: _____
<input checked="" type="checkbox"/> Heat	<input type="checkbox"/> Recreation facilities	<input checked="" type="checkbox"/> Free laundry	<input type="checkbox"/> Furniture	<input type="checkbox"/> Other: _____

The Landlord issued the Notice on August 30, 2018. S.W. testified that the Tenant was personally served by the other Landlord, C.T.

The reasons cited on the Notice are as follows:

<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input type="checkbox"/> put the landlord's property at significant risk.
<input type="checkbox"/> Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input type="checkbox"/> damage the landlord's property.
<input type="checkbox"/> adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input type="checkbox"/> jeopardize a lawful right or interest of another occupant or the landlord.
<input type="checkbox"/> Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
<input type="checkbox"/> Tenant has not done required repairs of damage to the unit/site.
<input checked="" type="checkbox"/> Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlords failed to provide any information in the Details of Cause section which would indicate the reasons for issuing the Notice.

In terms of the alleged breach of the material term of the tenancy agreement, the Landlord stated that the Tenant has stored items in the detached garage. She confirmed that he has been doing so since the day he moved in. She stated that she

gave him permission to do so at the time, but she claimed that she then told him he needed to move his items, and he has refused. She confirmed that these discussions occurred on the telephone and were not in writing.

The Landlord stated that the detached garage is approximately 600 square feet. She claimed that because they did not check off the box for "storage" they believed that this was a material term of the tenancy.

In terms of the alleged "significant interference or unreasonable disturbance" the landlord confirmed that this also relates to the Tenant's use of the garage. She stated that she and the other Landlord were planning to get married on September 1, 2018. She claimed that they were not able to store their wedding items in the detached garage as intended due to the fact the Tenant continued to store his items there.

The Landlord stated that on July 8, 2018 the Landlord called the Tenant and informed him that he needed to move his items from the garage. She also stated that she informed him that she was coming on July 22, 2018 and he would need to move his items before that date. She stated that when she arrived he had not moved a thing.

The Landlord further testified that because the Tenant is storing his items in the garage she is not able to rent it to others. She testified that she previously rented the garage to M.K. from October 27, 2015 to February 27, 2018 for \$150.00 per month. In support she provided a copy of the residential tenancy agreement with M.K. in addition to a handwritten letter from M.K. confirming this payment. M.K. also wrote that part of the agreement was that he "would look after [the Landlord's] personal belongings she stored in the garage".

In response to the Landlords' submissions the Tenant testified as follows.

The Tenant confirmed that storage was not specifically noted on his original tenancy agreement however he stated the Landlord allowed him to use the garage for storage.

The Tenant also noted that the original tenancy agreement was signed on May 28, 2018, and that the one which was submitted into evidence by the Landlord had been altered to include a handwritten notation which required the Tenant to obtain permission from the Landlord before making any alterations; the Tenant claimed this was handwritten by the Landlord after the original was signed.

The Tenant claimed that he negotiated a rent of \$1,600.00 when the Landlord originally asked for \$1,650.00. The Tenant further claimed that when he agreed to rent the rental unit he negotiated an agreement with the Landlord that he would be able to use the shop, which he stated is indicated by the agreement including three parking stalls.

He stated that the rental unit includes an "open area" for parking, such that there aren't really any "stalls". The Tenant confirmed that he stores motorbikes, a motorbike trailer, tools, Christmas items, children's bikes, toys and other items that can't fit in the suite. He further noted that the Landlord, S.W. has stuff in the garage which she keeps in there just like when she rented it out to M.K.

The Tenant stated that the Landlord did not ask for additional rent for the use of the detached garage and was aware and agreed to him using the space.

In response to the Landlord's allegation that the Tenant changed the locks on the garage the Tenant stated that the upstairs renter took the lock of the detached garage. He then put a new lock on the detached garage to make sure his items and the Landlord's items were safe. He also provided the Landlord with a copy of the key the next time she came to the rental unit, which he believes she retrieved.

In terms of the Tenant's claims that the Landlord provide services or facilities as required by law, the Tenant testified as follows.

The Tenant stated that the plumbing makes a loud sound whenever the plumbing is used (notably this sound was audible during the hearing so such an extent that it was difficult to hear the Tenant at times).

The tenant also testified that he has no access to the electrical panel.

The Tenant also claimed that the metal storm windows have malfunctioned such that they do not go up, and consequently the rental unit has limited natural light and is very dark.

In response to the Tenant's claims regarding the plumbing, electrical panel and storm windows the Landlord responded as follows.

She stated that she hired a plumber who has been to the rental unit three times, but can't figure out the problem.

She also stated that only the upstairs tenant has access to the electrical panel, although it is in an area which could be accessed by both tenants.

She also stated that the windows were all being replaced within four weeks of the hearing.

Analysis

After consideration of the testimony of the parties, the evidence filed and on a balance of probabilities I find as follows.

Ending a tenancy is a significant request and must only be done in accordance with the *Residential Tenancy Act*.

Section 52 of the *Act* provides that for a Notice to End Tenancy to be effective, it must comply with section 52 of the *Act* which provides as follows:

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) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Although the Landlords checked off boxes on the form indicating the reasons as set out in the legislation for ending the tenancy, they failed to provide any details in the appropriate section which reads as follows:

DETAILS OF CAUSE(S): Include any dates, times, people or other information that says who, what, where and when caused the issue. The RTB may cancel the notice if details are not described. Attach separate sheet(s) if necessary (signed and numbered).
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The Landlord failed to provide any such details as required. I therefore find that the Notice fails to comply with section 52 and is ineffective. Consequently, the Tenant's request to cancel the Notice is granted.

I also note that the Landlord alleged the Tenant breached a material term of the tenancy agreement.

As the Policy Guideline 22 explains:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

I also note that even had the Notice complied with section 52, I find the Landlord has submitted insufficient evidence to show that the Tenant's use of the detached garage for storage was a breach of a *material term* of the tenancy agreement.

The parties have each made monetary claims against the other. Should the Landlord wish to pursue additional rent from the Tenant pursuant to section 23 of the *Regulations* as a result of his use of the detached garage for storage, and her corresponding inability to rent the space to others, she is at liberty to make such an application.

I will now turn to the Tenant's request for an Order pursuant to section 62(3) that the Landlords provide services or facilities as required by law.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

Landlord and tenant obligations to repair and maintain

- 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.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The *Residential Tenancy Act Regulation – Schedule: Repairs* provides further instruction to the Landlord as follows:

8 (1) Landlord's obligations:

- (a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- (b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

As noted, the sound from the plumbing in the rental unit was so loud that it disrupted the hearing. I accept the Tenants' evidence that this sound occurs whenever the plumbing is engaged both in the downstairs and upper rental unit. The Landlord conceded that this was a problem, but indicated that the plumber she had hired could not resolve the issue.

The Landlord conceded that the Tenant did not currently have access to the electrical panel.

The Landlord also testified that all of the windows in the rental unit were to be replaced within four weeks of the hearing on October 25, 2018.

Pursuant to section 62(3) of the *Act* I Order as follows:

1. By no later than November 15, 2018, the Landlords shall hire a different qualified plumber to investigate and repair the problems in the plumbing which are causing the excessive noise.
2. By no later than November 8, 2018 the Landlords shall ensure the Tenant has access to the electrical panel for the rental unit.

3. By no later than November 15, 2018 the Landlords shall replace all of the windows in the rental unit.
4. The Landlords are to comply with section 29 of the *Act* in terms of providing notice to the Tenant for the purposes of accessing the rental unit to complete the required plumbing repairs and window replacement.
5. The Tenant shall make his best efforts to accommodate the Landlords' request to enter the rental unit for the plumbing repairs and window replacement.

Conclusion

The Tenant's request for an Order canceling the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request for an Order pursuant to section 62(3) as it relates to the plumbing repairs, access to the electrical panel and window replacement is granted as set out in the Orders contained in this my Decision.

The Tenant's request for monetary compensation from the Landlord is dismissed with leave to reapply.

The Landlords' request for monetary compensation from the Tenant is dismissed with leave to reapply.

Pursuant to section 72 of the *Act*, the Tenant's request for recovery of the filing fee is granted. The Tenant may reduce his next month's rent by \$100.00.

The Landlord's request for recovery of the filing fee is dismissed.

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 1, 2018

Residential Tenancy Branch