



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, MNDCT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), for an Order for the Landlord to complete emergency repairs, and for monetary compensation.

The Tenant was present for the duration of the teleconference hearing, as was the Landlord and an agent for the Landlord (the “Landlord”). The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served to the other party as required.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord be ordered to complete emergency repairs?

Is the Tenant entitled to monetary compensation?

Background and Evidence

The Tenant testified that he has lived in the rental unit for more than 10 years. The Landlord testified that it has been just under 10 years. The parties were in agreement that current monthly rent is \$650.00, due on the first day of each month. They also agreed that no security deposit or pet damage deposit was paid.

The Landlord served the Tenant with a One Month Notice on September 28, 2018 by giving it to the Tenant in person. The Tenant confirmed that he received the notice on September 28, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant is repeatedly late paying rent
- Tenant has allowed an unreasonable number of occupants in the unit
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant

Further details on the One Month Notice were stated as follows:

‘Rent in arrears. Repeatedly late paying rent. Tenants in the building have called me many times for loud noise.’ (Reproduced as written)

The Landlord provided testimony that the Tenant often pays the rent late. They stated that he has likely paid the rent on time four months during the past year and is currently still behind on rent payments. The Landlord stated that they did not submit any documentary evidence regarding late payment of rent or unpaid rent.

The Landlord submitted that the Tenant often has his girlfriend and friend stay at the rental unit and that they are not always aware of who is staying there. They also testified that they receive calls late at night from other residents of the building stating

that there is unreasonable noise and disturbance from the Tenant due to having loud parties and slamming doors.

The Landlord submitted into evidence a letter dated September 3, 2018, in which they noted outstanding rent due, and that he must vacate by October 31, 2018. The Landlord stated that they did not realize they needed to use the One Month Notice form, which is why an official One Month Notice was provided on September 28, 2018.

The Landlord also submitted a written submission in response to the claims of the Tenant, and a letter from the other residents in the building, dated August 2018. The letter notes that the tenants are disturbed by loud gatherings, music, doors slamming and other noise coming from the Tenant's rental unit, as well as the unit that is occupied by a family member of the Tenant. It is signed by four residents of the rental building.

The Tenant provided testimony that he has been late paying rent on occasion due to being out of town, but it has not been as often as stated by the Landlord. However, he stated that he had an agreement with the Landlord and tries to catch up by paying double the rent amount on some occasions. He became behind in rent during a period of time when he was injured, and he had a family member pass away. The Tenant submitted into evidence hospital records from the time period when he was injured.

The Tenant stated that he is not causing any noise disturbances in the rental unit, as he is often away and has not been staying in the unit all of the time.

The Tenant has also filed a claim for emergency repairs. He testified that there have been rodents in the rental unit, as well as bedbugs. He would like the Landlord to take care of the issue with the rodents. The Tenant stated that he has many photos of the rodents, but did not submit them into evidence.

The Landlord stated that they are aware of the issue with the rodents and have been attempting to manage it. As soon as they became aware of the rodents in the building, they called the pest control company. The Landlord submitted documentary evidence from the pest control company regarding ongoing management of rodents in the building. They testified that they are working on the issue, and have an arrangement with the pest control company to come by monthly.

The Tenant has also claimed \$4,000.00 as compensation from the Landlord for a period of time when he was unable to use his rental unit due to the presence of rodents and

bedbugs. The Tenant submitted that this is calculated at \$650.00 per month for 5 months, as well as \$750.00 for the cost of personal belongings being ruined by the bedbugs. This includes the disposal fees for his mattress that he had to get rid of due to bedbugs. The Tenant stated that he first noticed the presence of rodents in March 2018 and it has been ongoing since then.

The Tenant stated that it has been stressful having rodents in the unit and not knowing whether they have walked across his dishes or eaten his food. He stated that he sometimes stays in another rental unit in the building where a family member resides.

The Landlord stated that they understand that this is an ongoing issue with the rodents and will have the pest control company come by again and continue to monitor the issue.

Analysis

In regard to the One Month Notice, dated September 28, 2018, I refer to Section 47(4) of the *Act* which states that a tenant has 10 days in which to file an Application for Dispute Resolution to dispute the notice. As the Tenant received the One Month Notice on September 28, 2018, and applied to dispute the notice on October 4, 2018, I find that he applied within the time provided by the *Act*.

When a tenant applies to dispute a One Month Notice, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice states that the Tenant is repeatedly late paying rent. However, I find insufficient evidence to establish that the Tenant has paid rent late as the Landlord did not submit any documentary evidence. When the parties to a dispute resolution proceeding provide conflicting testimony, the party with the burden of proof must submit documentary evidence over and above their testimony to establish that the events occurred as stated.

The parties were also not in agreement regarding whether there is an unreasonable number of occupants in the unit. However, I find that I cannot determine whether this is occurring, as the Landlord did not submit any documentary evidence to establish whether there are an unreasonable number of occupants in the rental unit.

The Landlord submitted a letter from other tenants in the building stating that noise disturbances occur from the Tenant's unit, as well as another unit in the building where a family member of the Tenant resides. However, as the Tenant was not in agreement that the noise is coming from his unit, I do not find the Landlord's documentary evidence sufficient to establish their claim.

Neither the Landlord's testimony, nor their documentary evidence includes specific information regarding the noise disturbances. As such, I find that the Landlord did not prove that the Tenant is causing noise that is significantly interfering with or unreasonably disturbing other occupants or the Landlord.

The One Month Notice also stated that the Tenant or guests of the Tenant are engaging in illegal activity that is adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant. Again, I find insufficient evidence from the Landlord to support the claim that illegal activity is occurring and causing disturbances to the landlord or other occupants of the building. Neither the Landlord's testimony nor their documentary evidence specifically mentioned illegal activity.

On the One Month Notice, the Landlord provided further details that include that the rent is in arrears, for which they also provided testimony at the hearing. However, outstanding rent is not a reason to end a tenancy with a One Month Notice as outlined in Section 47 of the *Act*.

Due to insufficient evidence, I do not find that the Landlord met the standard of proof required to support the validity of the One Month Notice. Therefore, I find that the Tenant was successful in his application to cancel the One Month Notice. The One Month Notice dated September 28, 2018 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's claim for the need for emergency repairs, and for monetary compensation, I note that the onus for these claims is on the Tenant, meaning that the Tenant must prove the claims, on a balance of probabilities.

Section 33(1) of the *Act* defines emergency repairs as follows:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Based on this definition, I do not find evidence before me that an Order for emergency repairs is needed. The Landlord was in agreement that there is a rodent issue in the rental unit. I accept their documentary evidence from the pest control company that demonstrates they are working on solving the issue. Therefore, I dismiss the Tenant's application for emergency repairs.

As for the Tenant's claim for monetary compensation, I refer to the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test to determine if compensation is due:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In the application of the above test, I find insufficient evidence to establish the value of the loss experienced by the Tenant. The Tenant claimed a loss of \$650.00 for 5 months of his tenancy, which would be full loss of the rental unit. The testimony and documentary evidence of the Tenant did not indicate that he lost complete use of the rental unit for a period of 5 months.

The Tenant also claimed \$750.00 for the loss of personal belongings and a mattress due to bedbugs. However, the Tenant submitted no documentary evidence regarding the items that were lost or their value. I also have no evidence before me regarding the presence of bedbugs in the rental unit.

Therefore, I dismiss the Tenant's claim for monetary compensation.

Conclusion

The One Month Notice, dated September 28, 2018, is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application for emergency repairs and for monetary compensation are dismissed, without leave to reapply.

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 07, 2018

Residential Tenancy Branch