Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL, RR, RP, FF

Introduction

This hearing dealt with an application by the tenant for an order that the landlord perform repairs and an order permitting the tenant to reduce rent until repairs were completed and to compensate her for emergency repairs. The hearing also dealt with a further application by the tenant to dispute a notice to end tenancy. Although the application to dispute the notice to end tenancy had been scheduled to be heard on March 16, the parties agreed to bring the matter forward so the two applications could be heard together.

Issue(s) to be Decided

Should the landlord be ordered to perform repairs?

Has the tenant followed the required procedure for emergency repairs triggering an entitlement to deduct the cost of the repairs from her rent?

Does the landlord have grounds to end the tenancy?

Background and Evidence

The rental unit is on the ground floor of a home which is also occupied by the landlord's son, E.L.. E.L.'s unit is beside the rental unit with one room, a computer room, directly above the rental unit.

The tenant testified that on or about January 3, 2009 the landlord inspected the rental unit and discussed the refrigerator, which was new, and the tenant's complaint that the door was not closing properly. On that date, the landlord told the tenant that she had overloaded the shelves on the door and that if she avoided weighing down the door, the door would close properly. The tenant insists that the door is designed to hold items such as cartons of milk and juice and that she should not have to reduce the number of

items she stores in the door. The tenant made a number of other complaints on that date, some of which were repaired by the landlord and others which appear not to be in issue any longer. At the hearing, when asked to specify which repairs were requested, the tenant identified only the repair of the refrigerator door and the repair of the built-in metal bathtub drain stopper. The landlord testified that the refrigerator is brand new and that his inspection revealed that the door could be completely shut if it were not weighed down too heavily. The landlord agreed to replace the drain stopper.

At some point in February the tenant discovered that the toilet would not flush. The tenant contacted E.L. who was able to effect a repair by reconnecting the chain inside the tank. The toilet worked only for a brief period, and when the tenant contacted E.L. a second time, he again reconnected the chain. The toilet stopped working for a third time, at which point the tenant telephoned the Residential Tenancy Branch and was advised that the situation could be characterized as an emergency repair and that the tenant should call a professional to repair the toilet and ask the landlord to reimburse her. The tenant called a friend who she claims is a professional plumber and paid him $75.00 to reattach the chain, install clips to prevent the chain from slipping and adjusting the water level. The friend wrote a letter outlining the services performed and cash received. The tenant seeks to recover the $75.00 paid to the friend. The landlord objected to reimbursing the tenant for the cost of the repair as he could have performed the repair for much less had he been given the opportunity. The landlord also expressed doubt that the tenant's friend was a professional plumber.

The tenant testified that E.L. and his family have generated excessive noise over the past several months. The tenant testified that she frequently hears thumping above her, which she attributes to someone jumping in the room above the rental unit. The tenant further testified that E.L. will occasionally have guests over to watch Canucks games and that they cheer every time the Canucks score. The tenant testified that on one occasion at the beginning of January, E.L. was playing music very loudly and when she asked him to turn it down, he said he was playing it loudly on purpose. After approximately 15 minutes, E.L. turned the music down. E.L. acknowledged that he did play music loudly on that one occasion in protest of the tenant continually singing with her karaoke machine and disturbing him and his family. E.L. denied any further

disturbance out of the ordinary.

The parties agreed that the tenant was served with a two-month notice to end tenancy on January 28, the day after the tenant served the landlord with her notice of hearing and application for dispute resolution. The notice alleges that the landlord intends to move a family member into the rental unit. The tenant suggested that the landlord had not given the notice in good faith, but was using it as a device to escape having to perform repairs to the rental unit. The tenant pointed to the timing of the notice having been served the day after the tenant served notice of her dispute resolution application. The landlord testified that his son, M.L., will be moving in the rental unit. The landlord testified that M.L. currently rents an apartment from the landlord at a rate of $1,700.00 per month which he can no longer afford. In December, the landlord listed the apartment for sale and provided a copy of the listing agreement. The landlord testified that if both of his sons lived in the home, they could carpool to work, which would further assist them financially.

Analysis

First addressing the request for repairs, as the landlord agreed to replace the drain stopper I find it appropriate to order the landlord to carry through on his commitment. **I order the landlord to repair or replace the drain stopper no later than Friday, March 13, 2009.** The tenant bears the burden of proving that disputed repairs are required. I am not satisfied that repairs to the refrigerator door are required. The position of the landlord, that the door will not close when it is overloaded, seems reasonable and I find that the tenant must take steps to ensure that the door is not too heavily weighed down. The tenant's application for an order that the landlord repair the refrigerator door is dismissed.

The tenant's claim for a reduction in rent to compensate her for having to tolerate noise is also dismissed. I am not persuaded that the E.L. and his family are making an excessive amount of noise. While the tenant is certainly entitled to quiet enjoyment of her rental unit, she must take into consideration that she chose to live in a multi-family dwelling, which will by its nature permit some noise from neighbours to penetrate walls and ceilings than would a single-family residence. I am not satisfied that the noise

complained of is beyond what one would consider reasonable for a multi-family dwelling. While one occasion of E.L. purposely playing loud music occurred, it was addressed after the tenant made a complaint and has not been repeated. I find that this instance is not sufficient to warrant compensation.

The tenant claims that she had the toilet repaired as an emergency repair under Section 33 of the Act. Section 33 provides that in order to be characterized as emergency repairs, the repairs must be urgent, necessary for the health or safety of anyone or for the preservation or use of residential property and made for the purpose of repairing damaged or blocked water or sewer pipes or plumbing fixtures. The Act also requires that the tenant make 2 attempts to contact the landlord when emergency repairs are required before undertaking the repairs herself. Section 33(6) of the Act provides that the landlord does not have to reimburse a tenant for emergency repairs if 2 attempts to contact the landlord are not made. While I can accept that the toilet not flushing may be considered an emergency repair issue, I find that the tenant failed to follow the procedure outlined in section 33 of the Act, namely making two attempts to contact the landlord. I can appreciate that the tenant was frustrated that the repairs performed by E.L. seemed ineffective and did not last, but this did not relieve the tenant of the obligation to contact the landlord and give him the opportunity to perform the repairs. The tenant's claim for reimbursement of the $75.00 paid to repair the toilet is dismissed.

As for the notice to end tenancy, the Act requires that the landlord give the notice in good faith. The British Columbia Çourt of Appeal addressed the issue of good faith in this context in *Semeniuk* v. *White Oak Stables* (1991) 56 BCLR (2d) 371 (C.A.). In that decision, the Court held at p. 276 "that the landlord must truly intend to do what it says, and that it must not be guilty of dishonesty, deception or pretence."

Residential Tenancy Policy Guideline #2 discusses the good faith requirement and articulates a two part test:

> First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

I am unable to find that the landlord's motive in ending the tenancy can be characterized as dishonest or ulterior. The fact that the landlord is in the practice of providing housing for his children and will no longer be able to provide housing for M.L. in the location he had previously occupied due to him selling that apartment has persuaded me that the landlord truly wishes to use the rental unit for the purpose of housing M.L.. I do not consider this an ulterior motive, but the primary motive of the landlord in ending the tenancy. While the landlord may have chosen this rental unit over other rental units he may have, and I note that no evidence was submitted as to whether the landlord has other rental units which may have been used to house M.L., and while the reason for choosing this unit may have been the fact that the relationship with the tenant has become increasingly strained in recent months, I find this is not sufficient to prove that the landlord has acted in bad faith. I note that there is nothing dishonest or unlawful about a landlord wanting to provide housing for his children. I find that the landlord has met the good faith requirement. The tenant's application to set aside the notice to end tenancy is dismissed. The tenancy will end on March 31, 2009 pursuant to the notice.

Conclusion

The landlord is ordered to repair or replace the drain stopper no later than Friday, March 13, 2009. The remainder of the tenant's claims are dismissed. As the tenant has been substantially unsuccessful in her application, I find that she must bear the cost of the filing fee paid to bring the application.

Dated March 03, 2009.