Dispute Resolution Services

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

DECISION

Dispute Codes:

CNL, MNDC, O, RP, RPP, LRE, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property with reason as: 49(6) (e) *The landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.*
- Money owed or compensation for damage or loss under the Act, regulation or tenancy agreement ($1550 + $2374 = $3924)
- Return the tenant's personal property ($200)
- Make repairs to the unit, site, or property.
- Allow a tenant to reduce rent for repairs, services, or facilities agreed upon but not provided
- Suspend or set conditions on the landlord's right to enter the rental unit
- Recover the filing fee from the landlord for this application($50)

During the hearing the tenant verbally withdrew their claim on application to Suspend or set conditions on landlord's right to enter the rental unit. The tenant also verbally amended their application in respect to the monetary claims identified in the application as B. 3. to state $1550, and C. 3. to state $2374 ($118.72 x 20 months).

During the hearing the landlord confirmed their need for the tenant to vacate the rental unit according to the Two Month Notice; but, did not verbally request an order of possession, as is permitted by Section 55 (1), in the event the landlord's Notice is upheld.

Both parties fully participated in the hearing and provided testimony under solemn affirmation. As well, each party also forwarded submission prior to the hearing.

Issue(s) to be Decided

Is the Two Month Notice to End Tenancy for Landlord's Use of Property valid?

Is the tenant entitled to the monetary amounts claimed?

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord's neglect or failure to comply with the Act? And, if so established, did the tenant take reasonable steps to mitigate the loss? The burden of proving loss and damage rests on the claimant, and as already stated, there is an obligation upon the claimant to act reasonably to mitigate or minimize the loss.

Should the tenant be allowed to reduce rent for a facility agreed upon but not provided?

Should the landlord be ordered to make repairs?

Background and Evidence

The tenancy began in July of 1996. Rent is $640 payable on the first of each month.

It is undisputed that by March 24, 2009 the tenant was served a Two Month Notice to End Tenancy for Landlord's Use: *The landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property,* with an effective date of May 31, 2009 (the Notice).

The tenant's claim is that the Notice and the reason for the Notice are in bad faith. Her testimony is that she believes the motive to issue her the Notice is because during her tenancy she has been an advocate for repairs to the building.

In respect to the Notice the tenant cited the landlord's, "timing is suspect" as the building has not had a resident caretaker since the tenant moved into her suite (1996), and there was a vacancy in the building several months before which could have been reserved for a new caretaker. In general, the tenant claims the landlord had other options in the past.

In forwarding the claim of 'bad faith' the tenant testified and submitted that on February 18, 2009 she was given a notice of annual rent increase (submitted), and letters dated February 18 & 28, 2009 to remove her truck canopy from an area of the property, "on threat of eviction" (submitted). As well, the tenant's testimony alleges she learned from speaking with other residents the landlord "asked other residents to complain about her".

The tenant further alleges that the landlord's failure to maintain the property: specifically, the entrance locks, mailboxes and lock boxes, have given rise to breaches of the building's security. The tenant believes this is how she has lost $1550 of her property from the storage locker assigned to her. The tenant provided photographs of several access doors and respective locks / latches, as well as for lock boxes which, at some point in time, appear were compromised.

The tenant testified that 2 years before, in January 2007, the landlord terminated the use of a storage room (other than her storage locker) that she had used for 10 years (photo of storage room with someone's items) without complaint by the landlord. The landlord reclaimed the room and it became unavailable to tenants. The tenant then determined to move her belongings from that storage room to a storage facility (U-Lok storage) for which she has been paying a monthly amount of $118.72. The tenant submits that as she was permitted to use this room for a long period of time, it should default to a right of her contractual tenancy as a 'facility agreed upon but not provided'. The tenant's claim is for 20 months of storage for a total of ($2374); and, for an ongoing reduction in her rent for the loss of the use of the storage room (facility).

The tenant has submitted that in July 2008 the landlord discarded some of her property valued at $200. During the hearing there was no supporting testimony forwarded or any evidence referenced respecting this alleged loss or what lead to the loss. It is the landlord's submission in response to the tenant's claims (C.2) which provides some insight into this portion of the applicants claim.

The landlord's representative and property manager provided submissions to the hearing and testified in response to the tenant's claims as follows:

- In August 2008 he advised the property owner /landlord of his intent to retire September 31, 2009. He currently spends a limited time on this building directly

on-site, and acknowledges the building and tenants deserve more attention and more hands on relations.

- The plan is to transition his current responsibilities of this property to a resident caretaker residing in the tenant's building and provide the building a much-needed on-site problem-solver and improved ongoing maintenance and timely repairs.
- He disputes the tenant's claims that the Notice was issued in bad faith or that it was for personal reasons as submitted by the tenant; but rather, it was a business decision based on several factors which included the fact that the tenant's suite is the suite providing the lowest income to the landlord.
- The landlord provided evidence to show that the landlord fully intends to do as stated in the Notice, and is not issuing the Notice to mitigate the issues forwarded by the tenant's claim. The new caretaker is already planned to move into the tenant's suite June 01, 2009, and will be trained by the current landlord / property manager.
- The annual rent increase notice to the tenant is standard permitted practice and keeping within the law. All letters to tenants are to ensure some proper and measured approach to problems or complaints for all tenants.
- The landlord disputes the tenant's claims that building security is not important to the landlord, and stated they have taken many precautions to eliminate security threats to the building, but regardless, break- ins happen everywhere, and that is why tenants are advised at the outset to guard their belongings and that the landlord will not be responsible. He provides evidence in the form of notices to tenants for routine care of the property, and invoice for locksmiths to remediate locks and other security features. The landlord also testified that security of the building goes beyond locks and doors
- The landlord testified that the tenant's rental agreement expressly states the landlord is not liable for loss or damage to the tenant's property.
- The landlord's testimony is that he is committed to all repairs and ongoing remediation of the building's security issues such as the entrance locks, mail boxes, and lock boxes.
- The storage room (facility) the tenant claims to be part of the tenancy has never been part of the tenancy agreement with the tenant. At the outset of the tenancy the only storage assigned to the tenant was a locker. The storage room is the landlord's space which the landlord has, as goodwill, permitted to be used until it

was realized to be a source of liability for the landlord, and an area which became, “a dump”.

- The tenant was issued a locker along with her suite for her personal use.
- The landlord denies they are responsible for the cost to store a tenant’s extra belongings / property.
- The landlord testified he does not agree with the tenant that she has lost a facility extended to her or included in the terms and conditions agreed upon in the Rental agreement of July 1996, and therefore does not see a reason for why her rent should be reduced in compensation.
- In respect to the tenant’s claim the landlord discarded some of her personal property almost 2 years ago; the landlord’s submission is that all tenants were given prior notice to collect their items from common tenant areas to accommodate new carpeting and the installers. All items left of value were secured and the landlord’s recollection is that the tenant retrieved her items of value the following week.

Analysis

As to the Two Month Notice to End Tenancy for Landlord’s Use, the tenant brought into question the landlord’s motive and reason for seeking to have her vacate the residential tenancy. The tenant testified that to her thinking, to put it bluntly, the Notice to End the tenancy is to simply get her out of the way because she is regarded as a problem, being an advocate for renters in the building. The landlord confirmed they will surely proceed to do as stated in the reasons for the Notice and that nothing is being done, “in bad faith”.

When the “good faith” intent of the landlord is brought into question the burden is on the landlord to establish that they truly intend to do what they indicate on the Notice to End, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy, as the landlord’s *primary* motive. The landlord re-iterated the tenant’s suite is required for conversion for use by a new caretaker for the residential property and that the landlord is in fact proceeding on this process at this time and the new caretaker is moving in on June 01, 2009. If an ulterior motive exists; I do not believe that an ulterior motive is the landlord’s *primary* motive for ending this tenancy. I believe the primary motive is the reason stated in the Notice to End Tenancy, and therefore I find the landlord has met the requirements of having acted in “good faith” in issuing the notice,

and that the landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

I find the landlord properly served the tenant with the Notice to End Tenancy and I find the Notice is valid, that they will provide the one month's rent to which she is entitled as compensation. Therefore, the landlord's Notice is upheld. I dismiss the tenant's application to cancel the Landlord's Two Month Notice to End Tenancy for landlord's Use dated March 21, 2009.

Contrary to the tenant's testimony and submissions, I do not see a pattern of neglect by the landlord or negligence on the part of the landlord leading to the tenant's loss of personal property. I prefer the landlord's submissions and testimony that they work hard to address the needs and security of their tenants. Both, the tenant and the landlord have submitted and testified of the history of communication between the landlord's representative and the tenants, as well as the various efforts to mitigate and address problems, which I find show a pattern of efforts toward due diligence by the landlord. I find the tenant has not met her burden of proving it is the landlord's negligence that is at the root of her loss, or proving how she reasonably acted to mitigate or minimize the loss. Therefore, I dismiss this portion of the tenant's claim for loss in the amount of $1550 in its entirety.

I find the storage room the tenant claims to be a "facility agreed upon" is not a contractual entitlement of the tenancy, nor has evidence been forwarded which convinces me the use of the storage room was expressly "agreed upon" at the outset of the tenancy. The tenant wishes to have this storage room declared a facility within the tenancy. However, I find the storage room is the landlord's space, which for reasons of the landlord was reclaimed over 2 years ago, and effectively put an end to the landlord's extension of 'goodwill' in regard to it's use by tenants. The tenant subsequently determined to seek off-site storage of her property. Therefore, I dismiss this portion of the tenant's claim of costs for storage of her property in the amount of $2374.

In respect to the tenant's application for the return of her personal property claimed to be valued in the amount of $200, the burden of proving losses in this matter rests with the tenant. I am not able to find that the landlord was in possession of the tenant's property, or of what the property consists. As well, the tenant did not support her claim that the landlord's negligence somehow lead to the landlord discarding her property of

value. Nor did the tenant substantiate the valuation amount in her claim upon which an Arbitrator could make a monetary finding. Therefore, I dismiss this portion of the tenant's claim of $200 for property discarded by the landlord.

As I have upheld the landlord's Notice to End Tenancy and found the tenant was not denied a facility agreed upon but not provided, I find I do not need to consider the tenant's request for a reduction of future rent.

On reflection and deliberation, I prefer the landlord's sworn testimony that they are solemnly committed to the remediation of all the building's issues: entrance locks, mail boxes, and lock boxes, as well as increased maintenance. I find it is not necessary at this time to order the landlord to make these repairs, therefore decline to so order.

As the tenant was not successful in their application, they are not entitled to recovery of the filing fee.

Conclusion

This application is hereby dismissed.

Dated April 20, 2009