Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

CNC, MNDC, MNR, OLC, RP, RP, LRE LAT, RR, OPC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated March 6, 2009, purporting to be effective April 6, 2009. The tenant's application also requested:

- a Monetary Order for the cost of emergency repairs;
- a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement;
- an Order compelling the landlord to comply with the Act, Regulation or tenancy agreement;
- an Order to compel the landlord to make emergency repairs;
- an Order compelling the landlord to make repairs to the unit, site, property;
- an Order compelling the landlord to provide service or facilities required by law;
- an Order suspending or setting conditions on the landlord's right to enter the rental unit;
- an Order to authorize the tenant to change the locks on the rental unit;
- an Order allowing a tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- The tenant is requesting a monetary order in the estimated amount of $1,500.00

This hearing also dealt with a cross application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated March 6, 2009, purporting to be effective April 6, 2009. The landlord was requesting monetary compensation from the tenant for damage to the unit in the amount of $325.00 and reimbursement for the $50.00 cost of filing the application.

Issue(s) to be Decided

The issues to be determined on the tenant's application based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether these notices should be cancelled as requested by the Tenant. This requires a determination of whether:
    - the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; or
    - the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- Whether the tenant has established entitlement to be reimbursed for the cost of emergency repairs under section 33.
- Whether the tenant is entitled a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement;
- Whether an order is warranted to force the landlord to comply with the Act, Regulation or tenancy agreement;
- Whether an Order to compel the landlord to make emergency or other repairs to the unit, site, property is justified ;

- Whether an Order should be issued compelling the landlord to provide service or facilities required by law;
- Whether an Order suspending or setting conditions on the landlord's right to enter the rental unit and to authorize the tenant to change the locks on the rental unit is warranted;
- Whether the tenant is entitled to receive an Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided;

The issues to be determined on the landlord's application based on the testimony and the evidence are:

- Whether the landlord Is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause
- Whether the landlord is entitled to monetary compensation for damages or loss under section 67 of the Act.

The burden of proof is on the landlord to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act. The burden of proof is on the tenant to prove the tenant's claims under the Act.

Evidence

Submitted into evidence were communications and notices including a letter dated February 26, 2009 from the tenant to the landlord expressing concerns about the landlord accessing the tenant's suite and advising that the tenant secured the door from her side, a letter dated February 26 from the tenant to the landlord listing needed repairs, a letter dated February 27, 2009 from the tenant to the landlord regarding "emergency repairs" and requesting the name and numbers of the landlord's plumber, electrician and appliance repair contractors, a note dated March 28, 2009 and another dated April 9, 2009 advising the landlord not to enter without a valid search warrant or order and prohibiting entry of anyone but the landlord and authorized or ticketed repair technicians, a copy of a note from the landlord dated April 1, 2009 advising the tenant to move a vehicle, letter supporting the tenant from a third party dated March 30, 2009, a

letter of complaint from a carpet installation manager dated March 27, 2009 in regards to an incident involving the tenant and the installers that occurred on February 25, 2009, a copy of a Condition Inspection Report completed by the tenant dated February 7, 2009, a copy of a One-Month Notice to End Tenancy for Cause dated March 6, 2009, a letter from a neighbour dated April 10, 2009 expressing concerns about activities of the tenant, the landlord's written chronology of events that occurred in March & in April 2009 and a photograph of damage caused to the door allegedly by the tenant's installation of a lock.

Background and Evidence One Month Notice to End Tenancy

The first issue to be dealt with is whether the One-Month Notice to End Tenancy for Cause should be enforced with an Order of Possession as requested by the landlord or whether the Notice is not supported and must be cancelled as requested by the tenant.

The landlord testified that the tenant had put the landlord's property at risk, and engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well being and jeopardized a lawful right or interest of another occupant or the landlord. According to the landlord, the unacceptable conduct included installing a lock on the door to the unit, creating a barrier to the electrical panel and water heater for emergency needs, not cooperating to provide the landlord reasonable access to the shared laundry facilities by restricting the landlord's use to a narrow window of time, refusing the landlord entry to assess or complete repairs, smoking cannabis on the premises, causing police to attend on site, displaying rude disrespectful conduct and commentary towards the landlord and the landlord's guests and harassing tradespersons attempting to do work for the landlord. The landlord testified that although no written warnings were issued to the tenant regarding the conduct, the landlord made repeated attempts to discuss problems and complaints with the tenant. However, these efforts merely served to antagonize the tenant and relations deteriorated further to the point that the all civil communication has now ceased. The landlord stated that, because the tenant continued to refuse to remove the lock and persisted in denying the landlord reasonable access to do laundry, the landlord was

forced to use a Laundromat before finally deciding to remove the laundry machines altogether. The landlord testified that, although the tenant made complaints about needed repairs in the unit, the tenant refused to cooperate by allowing the landlord entry to inspect and repair the problems and then proceeded to post inflammatory notifications on the door cautioning the landlord. The landlord testified that he has started to feel like an unwelcome intruder in his own home. The landlord testified that a One Month Notice to End Tenancy for Cause was served on the tenant and the landlord seeks an Order of Possession based on the Notice.

The tenant testified that the One-Month Notice for Cause was not justified. In regards to the installation of the lock, the tenant admitted that this did occur, but was in response to the landlord's insistence on entering the tenant's unit at will. The tenant testified that she had rented a self-contained unit and was therefore entitled to privacy. The tenant acknowledged that the advertisement did specifically state that the laundry was shared. However, because the laundry machines were physically located in the tenant's bathroom, the tenant felt justified in imposing a limited schedule on the landlord based on the tenant's needs and availability. In regards to refusing the landlord entry to complete repairs, the tenant stated that if the landlord provided the names of the contractors or tradespersons, she could assist by making arrangements to give these people access. The tenant testified that she felt it was necessary to be present any time the unit was entered by the landlord or by qualified tradespersons. The tenant testified that the landlord's approach, which entailed pounding on her door, and the landlord's decision to permit other people to enter her unit, prompted her to deny access. The tenant stated that she should not be expected to be interrupted or intruded upon at any time the landlord wants access. In regards to the smoking of cannabis on the premises, the tenant admitted that she did smoke it for medicinal purposes. The tenant stated that, although she did not have a valid doctor's prescription, she did possess a member card from the Compassion Club. The tenant also admitted to incidents where police had to attend on site, but stated that this was due to the landlord's interference. In regards to displaying rude disrespectful conduct and commentary towards the landlord and the landlord's guests, the tenant denied that she

was hostile or uncooperative and felt that she had to take a firm stand to protect her own privacy and peaceful enjoyment of her suite. The tenant also denied harassing tradespersons attempting to install flooring in the landlord's suite. In regards to the landlord's accusation that she had bothered the contractors, the tenant explained that she only initiated a discussion about the deficient flooring in her own unit which needed to be replaced and the workers agreed to measure her floor space. In regards to the accusation that the tenant was unwilling to cooperatively discuss problems with the landlord, the tenant stated she felt that, in tenancy relationships, all matters should be put in writing. The tenant stated that any actions and complaints she has put forward were completely justified and that the landlord was not correct in issuing the One-Month Notice to End Tenancy for Cause. The tenant feels that the Notice should be cancelled.

Analysis – Notice to End Tenancy for Cause

I find that the testimony and evidence of both parties confirmed that the tenant installed a lock on the door without the landlord's permission and without giving the landlord a key. Section 31 (2) of the Act states that a tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change and section 31(3) states that a tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing, or the director has ordered the change. In this instance the tenant violated the Act by installing a lock on the door to the unit and felt justified doing so on the basis of her allegation that the landlord was guilty of trespassing by entering her suite without permission. I find that, regardless of the tenant's reasons for installing the lock, the this is not permitted under the Act and it constitutes an intentional disregard of the law. I also take notice that during the hearing it was the tenant's stated intention to keep the lock in place even without an order to do so, despite my finding that this would be in violation of the Act.

I find that both parties also testified that the tenant had unilaterally imposed a "schedule" restricting the landlord to a brief period of time that was convenient to the tenant, during which he was required to do his laundry. While I do appreciate the tenant's need for privacy, I find it is clear that the tenant was not willing to negotiate a compromise or any alternate access based on the landlord's needs in regards to the laundry machines. Being that the tenant rented the unit knowing that the laundry would be shared, I find

that the tenant's unilateral action in imposing the rigid non-negotiable timeline, constituted unreasonable interference with the landlord under the Act. I find that where two units share a single facility, the presumption is that they are each entitled to equal access or at least equal input and there is an inherent obligation for each party to cooperate to establish a mutually agreeable schedule.

Both parties testified that the tenant was reluctant to allow entry when the landlord sought to go in to the suite, even for the purpose of assessing or completing repairs. At the same time, I find that the tenant made complaints that the landlord had refused to make needed repairs. I find that a few days after a written request for repairs, the tenant made an application for dispute resolution asking for compensation and for an order to force the landlord to make repairs. I find that this was not reasonable and that such conduct supports the landlord's contention that the tenant was uncooperative to the point of impeding the landlord's ability to maintain the property. Contrary to the testimony of the tenant, I find that the fact that the tenant issued a written demand for contact information for the landlord's tradespersons to make arrangements for servicing, was not intended to be a helpful gesture to assist the landlord. In fact, I find that, without first permitting the landlord an opportunity to assess and intervene, the tenant had unreasonably interfered with the landlord in regards to the landlord's right to repair and maintain the property.

In regards to the tenant's practice of smoking cannabis on the premises, the tenant was unapologetic, taking the position that, because this is a medical need, other residents in the building are required to tolerate the situation. I find that, regardless of the tenant's reason for using cannabis, regular smoking would constitute a significant interference and unreasonable disturbance for other residents in the building, particularly as this is a basement suite.

Regarding the allegation that the tenant engaged in rude disrespectful conduct and commentary towards the landlord and the landlord's guests, the parties were not in agreement. However, the tenant did admit to talking about her own flooring needs with tradespersons who were on site to do work for the landlord. While the tenant's perception was that the interaction with these workers was not in any way negative or disruptive, the letter from the company's installation manager indicated otherwise. The correspondence stated that the tenant made demands on the employees insisting that they measure her suite and she refused to leave them alone until this was done. The manager also stated that "*While our installers were working upstairs (the tenant)*

continually yelled and shouted from downstairs about their working upstairs while she figured they should be working downstairs as well as other matters that were none of our installers business or concern." I find that the tenant's conduct did constitute a significant interference and unreasonable disturbance under the Act.

Under section 47, significant interference and unreasonable disturbance serves as a valid basis upon which the landlord may end the tenancy for cause. Accordingly, I find that the One-Month Notice to End Tenancy for Cause issued by this landlord to be valid and justified under the Act and as such, I dismiss the tenant's request to cancel the Notice. I find that the landlord is entitled to an Order of Possession based on the Notice.

The One Month Notice was issued on March 6, 2009 with the effective date shown as being April 6, 2009. However, the effective date on a One Month Notice under section 47 of the Act, must be effective on a date that is: (a) not earlier than one month after the date the notice is received, and, (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. I find that in this instance, the earliest date to end the tenancy based, on the date of the Notice, would be April 30, 2009 and the Order of Possession in favour of the landlord will be effective on that date.

Tenant's Application and Claims

In regards to the portion of the tenant's application requesting a Monetary Order for the cost of emergency repairs and the request for an order for completion of emergency repairs, that included dripping taps in the kitchen and bathroom, leaking pipes, problems with one of the light fixtures in the bathroom, as well as minor repairs needed for the stove and refrigerator, I find that these deficiencies do not meet the description of emergency repairs under section 33 of the Act. I also find that the tenant did not incur any expenses for emergency repairs. Accordingly, I find no justification under the Act to issue any orders in relation to emergency repairs and therefore this portion of the tenant's application is dismissed.

In regards to the tenant's claim for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement, and the request for an Order allowing a tenant to reduce rent for repairs, services or facilities agreed upon

but not provided, it was testified that the tenancy had been devalued by the fact that the landlord no longer provided use of laundry facilities and had terminated the satellite television service. I find that the landlord did restrict or remove a service and facility by taking away the washer and dryer and the satellite. While section 27(2) of the Act does permit a landlord to restrict a non-essential service or facility this requires 30 days written notice to the tenant and the rent must be reduced to reflect the value of the loss. I find that the tenant is entitled to two months retro-active rent abatement at the rate of $80.00 per month for the loss of the laundry facilities and $50.00 per month for the loss of satellite television services. The total amount owed to the tenant for March 2009 and April 2009 is $260.00 and a monetary order will be issued ordering the landlord to compensate the tenant for this amount.

I find that, as the tenancy is ending, it is not necessary to make a determination in regards to the portion of the tenant's application relating to the request for an Order that the landlord comply with the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs to the unit; and an Order compelling the landlord to provide service or facilities required by law. The portion of the tenant's application relating to these matters is dismissed.

In regards to the tenant's request for an Order suspending or setting conditions on the landlord's right to enter the rental unit and an Order to authorize the tenant to change the locks on the rental unit, I find no justification under the Act to issue an Order in the circumstances before me. That being said, I must point out that the landlord can not enter the tenant's unit without first posting a written notice in compliance with section 29. I must also point out to the tenant that the tenant would not be in compliance with the Act if the tenant refused access to the landlord if the proper notification was given.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective Thursday, April 30, 2009. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The portion of landlord's application requesting a monetary order for damages is premature and is therefore dismissed with leave to reapply. The landlord is entitled to be reimbursed for the $50.00 cost of filing the application and this amount may be retained from the security deposit being held on behalf of the tenant, the remainder of which should be administered within fifteen days of receiving the tenant's forwarding address, in compliance with section 38 of the Act.

I find that the tenant is entitled to a monetary order in the amount of $260.00. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remainder of the tenant's application is dismissed in its entirety without leave to reapply.

April 2009 _____

Date of Decision Dispute Resolution Officer