

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The tenancy began on May 1, 1999. The rental unit is an apartment located in a multi-story apartment building. Two tenants, H.F. and Y.M., reside in the rental unit. On February 24 the landlord served the tenants with a one-month notice to end tenancy for cause. The notice alleges that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord and have caused extraordinary damage to the unit or property.

The landlord testified that on 5 occasions between December 14 and February 6 the tenants complained of inadequate heat in the rental unit. On December 14 the tenants first complained and the landlord arranged for their heating specialist, Marshall's, to attend the rental unit and inspect. No problem was found with the heating system. On December 18 the tenants again complained and the landlord arranged for Marshall's to inspect the unit a second time. Again, no deficiencies were found. On December 20 the tenants complained about inadequate heat and a frozen water line in the bathroom. The landlord again sent Marshall's to inspect the unit and again, no deficiencies were discovered. On December 27 the tenants reported a flood in the bathroom. Marshall's inspected the rental unit and found no leaks in the bathroom. At the hearing the tenants testified that the flood was due to a slow drip from the toilet. On January 15 the tenants

complained about inadequate heat in the tenant H.F.'s room. Marshall's inspected the unit and again found no deficiencies. The landlord provided a space heater for H.F.'s use. On February 6 the tenant H.F. complained about heavy condensation on her windows, mould on the window frames, and inconsistent heat supply. The landlord's manager described the tenant's tone as aggressive and demanding. H.F. denied having been aggressive or demanding. On February 12 the landlord arranged for the building's ventilation system and exterior to be inspected for hidden deficiencies. None were found.

On February 17 the landlord's agents, a renovations builder and a handyman, inspected the rental unit. The handyman changed the thermostat at the insistence of the tenant Y.M. The landlord submitted into evidence a letter from the handyman in which he wrote that the thermostat he removed from the rental unit was installed into his own apartment and found to work well. The landlord's building manager took three readings of the internal temperature of the rental unit which fluctuated between 31.9 – 35.5° C and the relative humidity level was 38%. The manager and the handyman both claimed that the Y.M. stated that he found the temperature to be perfect for him. Y.M. denied having made that statement. During the time the manager and handyman were in the rental unit, Y.M. asked the manager to leave. In his written statement the handyman claimed to have heard Y.M. yell "Get Out" and overheard Y.M. speaking on the telephone and reporting that there was an intruder in the apartment. Y.M. acknowledged having called 911 because the landlord refused to leave the rental unit, but denied having identified her as an intruder. The manager left the rental unit soon after Y.M. placed the 911 call.

The tenants testified that they not had control of the heat in the rental unit until very recently when in late April they were suddenly able to control the thermostat. Y.M. testified that the rental unit had been extremely hot during the winter, but that it was not his fault as he was unable to control the thermostat. Y.M. testified that he is asthmatic and would not need high heat, but rather that his asthma would have been aggravated by extreme temperatures.

As part of their inspection of the rental unit, the landlord's agents discovered that the washing machine was experiencing extreme condensation on the cold water drainage

line which was dripping onto an electrical outlet in the apartment below. The landlord has asked the tenants to discontinue use of their washing machine as he does not wish to risk the safety hazards resulting from the condensation dripping onto the outlet.

The landlord testified that he chose to issue a notice to end tenancy because he is of the opinion that the chronic overheating of the rental unit has caused extraordinary damage to the rental unit. The landlord is a professional engineer and produced a technical summary in which he explained the consequences of excessive interior heat. The landlord stated that based on the average temperature of 92° F and relative humidity of 39%, there was twice as much water vapor in the rental unit than the building was designed to handle. In the engineering report the landlord concluded that damaging condensation would cause the building structure to “be weakened and be subject to rapid decay and rot.” In his testimony the landlord stated that “if this situation continues, there is no question that the structure of the building will weaken and catastrophic failure will be inevitable.” The landlord had not personally inspected the rental unit, but based his findings on reports by his manager and handyman.

The landlord took the position that the tenants have also unreasonably disturbed the landlord in that they complained 6 times about heating deficiencies which did not appear to exist according to the heating specialist. The landlord has spent some \$500.00 paying for inspections of the rental unit which have shown that the heating system is fully functional. The landlord further testified that since the tenants called the police on February 17, the police have advised the landlord not to attend the rental unit without a police officer present. Because attendance in a non-emergent situation is not a police priority, the landlord claims that this has prevented him and his agents from conducting inspections.

Analysis

In order to support his notice to end tenancy, the landlord must prove at least one of the grounds alleged, namely that the tenants have caused extraordinary damage to the rental unit or that they have significantly interfered with or unreasonably disturbed the landlord.

I find as a fact that the tenants have willfully been overheating the rental unit. I have

arrived at this conclusion for a number of reasons. The tenants repeatedly reported inadequate heat, but did not at any time report excessive heat, despite their testimony at the hearing that they had been suffering from the extreme heat. There is no reason why the thermostat would have suddenly started working just prior to the hearing when it had been found to be operable on each and every inspection of the rental unit. I accept the testimony of the landlord's manager and handyman that Y.M. had stated that the high temperature was perfect for him. It simply does not make sense that the tenants would suffer in silence from extreme heat but clearly did not hesitate to contact the landlord when they felt chilled.

Having found that the rental unit was overheated by the tenants, I find that the landlord has not proven that the overheating has caused extraordinary damage. The landlord himself has not inspected the rental unit and his engineering summary makes assumptions that moisture had accumulated within the cavity walls without having verified this as a fact. Without confirmation that there is indeed moisture in the walls, I am unable to find that extraordinary damage has occurred. If the landlord conducts tests within the rental unit and discovers moisture in the walls, he is free to serve another notice to end tenancy on this ground. The tenants would be wise to maintain the heat in the rental unit at a reasonable temperature in order to prevent damage from occurring now that they are aware of the effects overheating can have on a building. Specifically, should the tenants continue to overheat the rental unit and condensation continue to accumulate on the cold water line of the washing machine causing water to drip on the electrical outlet below, the landlord may serve a notice to end tenancy because the tenants have placed the landlord's property at risk.

As for the landlord's claim that the tenants have significantly interfered with or unreasonably disturbed him, I am not satisfied that this is the case. The tenant's reporting of the frozen water line on December 20 and the flood on December 27 were legitimate complaints. At the time they had no way of knowing that their own overheating of the rental unit could have been the cause of these events and were not so advised until at least a month later. I find that the fact that the tenants felt chilled on several other occasions is not grounds to end the tenancy. Through the landlord's careful presentation of the effects of overheating the unit, the tenants should now be

aware that overheating can lead to a cooling effect. I find that while it was clearly inappropriate for Y.M. to telephone the police on February 17, there is no indication that the landlord or his agents are in any danger from the tenants. The police may have suggested that the landlord not attend the rental unit without an escort, but in the absence of any physical threat to either party the landlord is free to continue to exercise his right of entry pursuant to the Act. However, I find it timely to put the tenants on notice that placing restrictions on the landlord's right to access the rental unit and in particular telephoning the police when the situation does not warrant police attendance may give the landlord grounds to serve a notice to end tenancy in the future.

Conclusion

I find that the landlord has not proven that he has grounds to end the tenancy and I set aside the notice to end tenancy dated February 24, 2009. As a result, the tenancy will continue. The tenants have applied to recover the \$50.00 filing fee paid to bring this application. Although the tenants were successful in their application, I find that the landlord having served them with a notice to end tenancy was a reasonable response to their actions and I find that the landlord should not have to bear the cost of the filing fee.

Dated April 28, 2009.