

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order. 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?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The rental unit is a one bedroom unit located on the lower floor of a home in which a separate rental unit is on the upper floor. The parties agreed that on May 28, 2009 the tenant was served with a one-month notice to end tenancy (the "Notice"). The Notice alleges that the tenant has allowed an unreasonable number of occupants in the unit, that the tenant has seriously jeopardized the health, safety or lawful right of another occupant or the landlord and that the tenant has put the landlord's property at significant risk.

The parties have been through two other dispute resolution hearings, both of which were initiated by the tenant upon receipt of a notice to end tenancy. At the first hearing on January 29, 2009 the tenant disputed a notice given because the tenant was allegedly smoking on the premises, a rent cheque had been returned for insufficient funds and the tenant was alleged to have a third person living in the unit. The parties entered into a settlement agreement at the hearing whereby the parties agreed that the tenancy would continue and that the tenant would not smoke on the residential property and the tenant would put his garbage out for collection on the assigned day.

At the second hearing on May 28, 2009, the tenant disputed a notice to end tenancy given because the tenant had been repeatedly late paying rent. The Dispute Resolution Officer found that one of the late payments was attributable to a bank error and set aside the notice.

The landlord served the tenant with the Notice at issue in this hearing the same day she learned that the notice for repeated late payment of rent had been set aside.

The landlord testified that the tenant has had many guests in the rental unit, including his mother who stays at the rental unit approximately one night each week to care for the tenant's young son. The tenant testified that he and his son are the only regular occupants in the unit and that while he has guests, none have stayed for a sufficient length of time to allow them to be characterized as occupants.

The landlord testified that the tenant has seriously jeopardized her lawful right in that he has not been locking his doors. The landlord testified that she overheard the tenant say that he was leaving his door unlocked. The landlord further testified that the tenant and his mother had asked her for the security code in order to arm or disarm the security system which is installed in the rental unit. The landlord took the position that because the tenant had not been using the security system previously, he was putting the property at risk and further stated that she felt it was a risk to give him the security code. The landlord further took the position that the use of the alarm system was not included in the rent. The landlord did not provide the security code to the tenant or his mother. The tenant testified that he has always locked his doors and stated that he has locked himself out of the unit a number of times and had to ask the landlord for a key.

The landlord testified that the tenant has not been complying with the January 29 settlement agreement in that he has not been putting his garbage on the curb. The landlord testified that the tenant never puts his garbage on the curb and that his garbage can is now nowhere on the property. When asked if the tenant's garbage was accumulating somewhere on the residential property, the landlord admitted that she did not know, but theorized that his garbage must be stored somewhere. The tenant testified that he was in the practice of bringing his garbage to work with him and disposing of it there. The tenant further testified that he has not been living in the rental

unit over the past month and therefore has not been producing garbage at the unit. The landlord testified that after receiving the decision from the May 28 decision she telephoned the tenant's employer to ask questions about whether his paycheck in September had been deposited to the correct account and that she learned that he was no longer employed.

The landlord testified that the tenant was caught smoking on the premises in October and therefore posed a health risk to everyone on the property. The tenant acknowledged that he did smoke on the property a few times but that since the January 29 settlement agreement he had not smoked on the property. The tenant objected to the landlord raising the smoking issue when it had been conclusively dealt with in the January 29 hearing.

The landlord testified that the tenant had placed her property at further risk by dismantling the smoke detector in December 2008. The landlord testified that upon an inspection of the unit it was discovered that the face plate had been removed from the wired-in smoke detector and the wires were hanging from it. The tenant testified that as he explained to the landlord in December, he merely removed the faceplate in order to replace the battery, which is used as a back-up. The tenant testified that the battery was replaced and the smoke detector was once again fully functional.

Turning to the tenant's monetary claim, the tenant testified that during the tenancy the landlord has been unreasonably intrusive, making accusations and failing to comply with the Act. The tenant testified that when he paid his rent with \$10.00 and \$5.00 bills the landlord suggested he was using counterfeit bills. The tenant further testified that the tenant has telephoned his employer and his grandmother, telling both that she was trying to evict him. The tenant further testified that the landlord was very aggressive with a friend who was visiting him. The tenant presented evidence that the landlord has told him that he cannot use the jetted tub in the rental unit and that she was attempting to set up a time to do a move-in condition inspection report despite the tenancy having begun 10 months ago. The tenant seeks an award for loss of quiet enjoyment stemming from the landlord's failure to comply with the Act.

The landlord testified that she found it suspicious that a tenant would pay his rent in

small bills as no employer would pay their employees in such small denominations. The landlord acknowledged that she had telephoned the tenant's grandmother in September when his rent cheque was returned for insufficient funds and she had not been successful in her attempts to contact him at his own telephone number. The landlord further acknowledged having telephoned the tenant's employer after she received the May 28 decision from this tribunal and said that the purpose of the call was to confirm whether the explanation for the late rent the tenant had given in the May 28 hearing was accurate. The landlord explained that she was not aggressive with the tenant's friend, but had merely questioned him as to his qualifications as she was concerned that he was conducting some type of repair in the rental unit.

Analysis

The landlord bears the burden of proving that she has cause to end the tenancy. I find that she has failed to meet that burden. I find that the landlord has not proven that the tenant's guests are occupants rather than guests. A weekly visit from the same individual does not make that individual an occupant. I find that the landlord has failed to prove that the tenant has not been locking his doors. The landlord had no independent verification that the tenant was not locking the doors, but purported to rely on a comment he allegedly made and now denies. If the landlord is concerned about security, she can provide the tenant with the security code, for which he has made repeated requests.

I find that the landlord has failed to prove that the tenant has not been properly disposing of his garbage. The landlord was unable to prove that the tenant has stored garbage in the rental unit or around the rental unit in such a way that it creates a risk or a health hazard. Further, I find it completely believable that when one is not living in a rental unit, no garbage will be produced at the rental unit. I find that the issue of smoking has not arisen since the January 29 settlement agreement and find that the agreement of the parties at the January 29 hearing as recorded in that decision prevents the landlord from using a prior smoking incident as grounds to end the tenancy. I find that the landlord has not proven that the tenant dismantled the smoke detector. I accept the tenant's explanation as to why the faceplate had been removed from the smoke detector and note that the incident occurred in December but the

landlord did not raise it as an issue until May, nor did she suggest that the tenant had further interfered with the smoke detector.

For these reasons I order that the notice to end tenancy dated May 28, 2009 be set aside. As a result, the tenancy will continue.

As for the tenant's monetary claim, the tenant seeks the return of half the rent paid throughout the tenancy because of the landlord's failure to permit him quiet enjoyment of the rental unit. I find that the landlord has behaved inappropriately throughout the tenancy. The landlord is clearly on a campaign to evict the tenant and continues to revisit issues which have been dealt with in the past. The landlord's desire to end the tenancy has led her to be invasive into the tenant's personal life, telephoning his relatives and employer. While it was open to the landlord to communicate with the tenant by leaving correspondence at the rental unit, she chose instead to telephone a family member. When the landlord received the May 28 decision which was not in her favour, she chose to telephone the tenant's employer, which could have brought no benefit to her as the decision had already been made and could only negatively impact the tenant's relationship with that employer.

The landlord's monitoring of the tenant's garbage can seems unnecessary as the landlord had no suggestion that garbage was accumulating either inside or outside the rental unit. The landlord's failure to provide the tenant with the security code while at the same time trying to evict him for leaving the premises unsecured is contradictory and serves to demonstrate her determination to evict him. The landlord has threatened the tenant with disconnecting the jets on the jetted tub when their use has always been a part of the tenancy agreement and has pressed him to complete a condition inspection report some 10 months after the tenancy, a report which would have little value as it was not completed at the beginning of the tenancy when the landlord was obligated to complete it.

I find that through her campaign to evict him and his misuse of the eviction process provided under the Act as well as through her interference with his personal life, the landlord has deprived the tenant of the quiet enjoyment of his rental unit. However, I find the tenant's claim for half of the rent paid throughout the tenancy to be excessive. I

find that the tenant is entitled to recover 5% of the rent paid throughout the tenancy. The tenant has paid \$800.00 each month for 10 months. I find the tenant is entitled to recover \$400.00 which represents 5% of the \$8,000.00 paid from September – June inclusive. The tenant may deduct this sum from future rent owed to the landlord. The tenant is also entitled to recover the \$50.00 filing fee paid to bring his application and may also deduct this sum from future rent owed to the landlord.

I note that if the landlord continues to deprive the tenant of quiet enjoyment of the rental unit, the tenant is free to bring a further application for the period of time beginning in July 2009.

I further note that the issuance of a notice to end tenancy does not in itself constitute harassment or a deprivation of quiet enjoyment, but the issuance of notices for issues which have already been addressed and resolved or for which there is no reasonable support can equate to deprivation of quiet enjoyment.

Conclusion

The tenant is awarded \$450.00 which represents \$400.00 for loss of quiet enjoyment and the \$50.00 filing fee.

Dated June 26, 2009.
