



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenants' application to cancel a *1 Month Notice to End Tenancy for Cause*; for Monetary Order for emergency repairs, damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to comply with the Act, make repairs; for authorization to reduce rent and recovery the filing fee from the landlord. Both parties appeared at the hearing and were provided the opportunity to be heard.

The landlord received the tenants' evidence four calendar days before the hearing but only two business days before the hearing. The landlord claimed that he had not had much time to prepare a response to the tenants' submissions. Accordingly I did not accept the tenant's late documentary evidence or their request for an amendment and I proceeded to hear verbal testimony with respect to the original application. The tenants are at liberty to make another application with respect to compensation for emergency repairs if they wish to pursue that matter.

It should be noted that the parties, especially the landlord, had to be cautioned about interrupting the other party on numerous occasions; however, both parties remained in the teleconference call for the duration of the call. The landlord's witness had to be asked three times to leave the teleconference call.

Issues(s) to be Decided

1. Has the landlord established sufficient grounds for ending the tenancy for cause?
2. Have the tenants established a claim for compensation against the landlord and if so, the amount?
3. Have the tenants established an entitlement to reduce rent?
4. Orders for compliance, as determined necessary.
5. Award of the filing fee.

Background and Evidence

Upon hearing from both parties, I make the following findings. The tenancy commenced approximately one year ago. Rent is \$900.00 per month and is due on the 1st day of the

month. On July 28, 2009 the landlord personally served the tenants with a *1 Month Notice to End Tenancy for Cause* (the Notice). The Notice indicates the reasons for ending the tenancy are that the tenants have engaged in illegal activity that has, or is likely to damage the landlord's property and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that the male tenant told him he was growing marijuana and that the landlord heard a fan running and the smell of marijuana coming from the studio on the rental property. The landlord claims to have seen marijuana plants growing in the ground.

The tenants adamantly denied growing marijuana in the studio or anywhere else on the rental property. Rather, the tenants explained that the studio is used as a massage studio by the female tenant. The tenants stated that police have even attended the property and have commented that the studio smells of cedar wood.

The landlord requested two witnesses be called to the hearing. A female witness was called and she testified that she saw two marijuana plants growing in a mound of soil by the driveway in July 2009. A male witness, the landlord's brother, was called and testified that he saw 10 – 15 marijuana plants growing in the studio when he looked in the windows in July 2009.

The tenants pointed out that the landlord's witnesses included the landlord's employee and brother and that their observations were inconsistent. The tenants contend that even if plants were growing by the driveway, that the driveway is shared and that they do not rent that part of the property. The tenants submitted that the landlord is trying to evict them and has fabricated this story about marijuana growing.

The tenants' application includes a request for compensation of \$1,000.00 for damage or loss under the Act, regulations or tenancy agreement. The tenants testified that their right to quiet enjoyment was breached by the landlord's numerous phone calls and visits to the rental property whereby the landlord would yell and argue with the tenants. The tenants described how the female tenant would flinch every time a car came down the driveway in fear it was the landlord making another unannounced visit to argue with them. The tenants alleged that the landlord hit the male tenant with a broom handle, causing the tenant's face to become red and swollen. I heard that the tenants have had to involve the police three times with respect to the actions of the landlord.

The landlord denied hitting the tenant with a broom handle, even accidentally, and has no idea how the tenant's face became red and swollen. The landlord denied harassing the tenants.

The tenants made an application for repairs and emergency repairs. The tenants explained that they have gone days without water and had sewage back up in their bath tub but stated that the issues with the water supply and plumbing has since been resolved and are functioning to legal standards. I also heard from the landlord that he is often out of town and out of cell phone service areas and cannot receive phone calls or messages from the tenants.

Analysis

Notice to End Tenancy

The burden to prove that the tenants have engaged in an illegal activity that has or is likely to damage the landlord's property, or adversely affect the quiet enjoyment, security or physical wellbeing of another occupant or the landlord is upon the landlord. The burden of proof is based on the balance of probabilities. A balance of probabilities means the landlord has established it is more likely than 50% that the illegal event occurred, as alleged by the landlord.

In this case, I heard from three individuals who testified they saw or smelled evidence of marijuana growing and I heard from two individuals who denied they were growing marijuana growing. However, I have considerable reservations about the validity of the witness testimony as I found the landlord to be leading and trying to influence the witnesses' testimony. Upon hearing from all parties and asking questions of all parties, I have found the tenants' testimony to be more credible and consistent when compared to the large discrepancies in observations provided by the landlord and his witnesses and the landlord's failure to establish that any plants growing beside the driveway were on the rental property and were being grown by the tenants.

In light of the above, I found that the landlord has not met his burden to prove, based on the balance of probabilities, that the tenants have engaged in illegal activity that has or is likely to damage the rental unit or adversely affect the landlord. Therefore, the Notice to End Tenancy for Cause is cancelled and is of no effect.

Quiet Enjoyment

The Act establishes that the tenants have a right to quiet enjoyment of their rental unit and reasonable privacy, freedom from unreasonable disturbance and use of common areas free from significant interference. Frequent and ongoing interference by the landlord may form a basis to find breach of the covenant of quiet enjoyment. Interference by the landlord would include ongoing or repeated harassment, threats and intimidating behaviour. During the hearing, I found the landlord to be argumentative and aggressive, which is consistent with the tenants' testimony that the landlord continuously tries to argue with them. I accept the tenants' testimony that the landlord tries to engage in arguments with them on a frequent and ongoing basis and that there are reasonable grounds to find the landlord has breached the tenants' right to quiet enjoyment of the rental property. I award the tenant's the equivalent of one month's rent as compensation for this violation of the Act by the landlord. The tenants are hereby authorized to without a subsequent month's rent in satisfaction of this award and the landlord must consider that month to be paid in full.

Repairs

As I heard repairs, including emergency repairs, have been resolved, I make no orders to the landlord for repairs to the rental property.

Rent reduction

Although the water supply and sewage were not working properly for a few days, I do not award a rent reduction as the issues have been resolved and the lack of services to be temporary.

Orders for compliance

Upon finding that the landlord has breached the tenants' right to quiet enjoyment of the rental property, I ORDER that landlord, or any other person acting for the landlord, may only initiate contact with the tenants in writing by mail sent to the tenants' mailing address unless in the event of an emergency .

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The Act requires the landlord to post and maintain in a conspicuous place on the residential property, or give the tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs. As I heard the landlord is frequently unreachable by telephone for days at a time, and that the property has had past problems with water supply and plumbing, the landlord is ORDERED to immediately provide the tenants with an emergency contact name and number, in writing, to use in the event an emergency takes place.

Filing fee

As the tenants were largely successful with this application I order the landlord to compensate the tenants for the \$50.00 filing fee paid for this application. The tenants are authorized to reduce a subsequent month's rent by a one-time deduction \$50.00 in satisfaction of this award and the landlord must consider the rent paid in full.

Conclusion

The 1 Month Notice to End Tenancy for Cause issued July 28, 2009 has been cancelled with the effect that this tenancy continues.

The tenants are hereby authorized to withhold the equivalent of one month's rent as compensation for the landlord's breach of the tenant's right to quiet enjoyment of the rental unit and residential property. The tenants are further authorized to reduce a subsequent month's rent by a one time deduction of \$50.00 to recover the filing fee paid for this application.

The landlord is restricted from contacting the tenants unless it is done in writing by mail sent to the tenants' mailing address. This order applies to any agents or employees working on behalf of the landlord. The landlord is ordered to immediately provide an emergency contact name and telephone number to the tenants, in writing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 25, 2009.

Dispute Resolution Officer