

Dispute Resolution Services

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

Decision

Dispute Codes: CNC, CNR, ERP, OPR, OPC, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy and an order that the landlord perform repairs and a cross-application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Does the landlord have grounds to end this tenancy?

Should the tenant be ordered to pay for cable services?

Should the landlord be ordered to perform repairs?

Background and Evidence

The rental unit is located on the lower floor of a home in which the landlord resides on the upper floor. The parties agreed that on August 10 the tenant was served with a one-month notice to end tenancy for cause (the "Cause Notice"). The Cause Notice alleged that the tenant had been repeatedly late paying rent, that she had significantly interfered with or unreasonably disturbed the landlord, that she had seriously jeopardized the health, safety or lawful right of the landlord and that she had put the landlord's property at significant risk. The parties further agreed that on or about September 4 the tenant was served with a 10-day notice to end tenancy for unpaid rent (the "Rent Notice"). The parties further agreed that on August 30 the tenant and a witness asked the landlord to accept rent in a form other than cash and he refused. The landlord claimed that he did not see what kind of instrument the tenant intended to use to pay the rent, but acknowledged that he told the tenant he would only accept cash.

The tenant provided a copy of a money order dated August 38 made payable to the landlord and in the amount of the \$860.00 in rent owing.

The landlord testified that the tenant was late paying rent in the month of July. The landlord further testified that the tenant changed the locks on the rental unit and that it was only after he served her with the notice to end tenancy that she changed the locks back to the originals. The landlord provided photographs of the door showing two different doorknobs. The landlord further testified that on a regular basis, he hears the water running in the suite between the hours of 12:00 and 2:00 a.m. which disturbs him and his family.

The tenant denied changing the locks to the rental unit and said she could not explain why there were two different doorknobs shown in the photographs. The tenant testified that her 25 year old daughter occasionally works late and showers after work, but denied that water was running for 2 hours as alleged by the landlord.

The landlord testified that the tenant asked him for extended cablevision. The landlord showed a copy of a document written in Chinese which the parties agreed said that the tenant would be responsible for \$20.00 per month for extended cable. The landlord testified that the tenant's 25 year old daughter signed the agreement and further testified that he has been dealing with the daughter on a regular basis because they both speak the same dialect of Chinese. The landlord seeks an order that the tenant pay \$60.00 as the cost of the extended cablevision for July – September inclusive.

The tenant denied asking the landlord for extended cablevision and argued that her daughter's agreement should not be binding on her. The tenant acknowledged that in July she began receiving more Cantonese language television programming than she had previously.

The tenant testified that she has bars on her windows and has no smoke detector. The tenant testified that she has asked the landlord at least twice to remove the bars and to install a smoke detector. The tenant seeks an order that the landlord remove the bars and install a smoke detector.

The landlord testified that until he received the tenant's evidence just a few days before

the hearing, he had no idea that the tenant did not want bars on her windows or that she did not have a smoke detector. The landlord testified that he has an appointment in October for the city to inspect the suite and testified that he wants to wait for the inspector's recommendations before making changes to the rental unit.

Analysis

Addressing the Cause Notice, the landlord must prove one of the four grounds alleged in the notice in order to be granted an order of possession. I am not satisfied that running the water for two hours during the night is an unreasonable disturbance. The landlord has made the choice to turn a single-family dwelling into a multi-family dwelling and does not have the benefit of the soundproofing that would exist in a multi-family dwelling. While the sound of the running water is clearly disturbing the landlord, I do not find that it is unreasonable in the circumstances. In order to evict the tenant on the grounds that she is repeatedly late paying rent, the landlord must prove that she has paid rent late on at least three occasions. As the landlord has only alleged one occasion prior to the issuance of the Cause Notice, I find that the landlord has not met his burden of proof. I do not accept that the tenant does not know how the locks were changed. It is clear to me that the tenant changed the locks on the rental unit and then changed them back to the originals when she realized that she could be evicted for changing the locks. However, as the locks were changed only for a short period, I find that this is not sufficient to end the tenancy. The tenant is put on notice that should she change the locks again, it may provide the landlord with grounds for ending the tenancy in the future as such action will make it clear that the tenant does not intend to abide her obligations under the Act. I find that the landlord has not proven that he has grounds to end the tenancy for cause at this time. Accordingly I set aside the Cause Notice and declare it to be of no force or effect.

Addressing the Rent Notice, I find that the tenant attempted to pay the rent. Although the parties may have had a practice of the rent being paid in cash, there is no provision in the tenancy agreement requiring the tenant to pay the rent in cash. I find that the landlord was not entitled to refuse the rental payment and accordingly find that the landlord may not end the tenancy for unpaid rent. I set aside the Rent Notice and declare it to be of no force or effect. **I order the tenant to pay to the landlord the**

\$860.00 in rent which is owing for September no later than October 5. The landlord's claim for loss of income for October is dismissed. The landlord's claim against the security deposit is also dismissed as it would be inappropriate to deal with the security deposit as the tenancy will be continuing.

I find that the tenant had authorized her elder daughter to act as her agent during the tenancy and I find that the daughter's agreement to pay \$20.00 per month for extended cablevision is binding on the tenant. **I order the tenant to pay to the landlord \$60.00** which represents \$20.00 in cablevision payments for each of the months of July, August and September. The tenant must continue making the payments each month for the extended cablevision as long as she has access to that extended service.

I decline to order that the landlord remove bars from the windows. The bars were in place at the beginning of the tenancy and the tenant has not proven that the bars are prohibited by any law, regulation or code. However, I find that the landlord is obligated to provide a smoke detector in the rental unit and **I order the landlord to install a smoke detector and ensure it is fully operable no later than October 5, 2009.**

I note that the parties asked for the cost of translation services, agents fees and lost wages. Under the Act the only litigation related expense I am empowered to award is the cost of the filing fee. Accordingly the claims for other litigation related expenses are dismissed.

As each party has enjoyed partial success in their claims, I find it appropriate that each bear the cost of their own filing fees.

Conclusion

The notices to end tenancy are set aside. The landlord is ordered to install a smoke detector in the rental unit. The tenant is ordered to pay to the landlord \$860.00 in rent for the month of September and \$60.00 for extended cablevision for July – September.

Dated September 28, 2009.