

Decision

Dispute Codes: CNC, MNDC

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.

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 parties agreed that the tenant moved into the rental unit on July 3, 2009. The rental unit is located on the upper floor of a residence in which the landlord occupies the remainder of the residence. The parties further agreed that the rent was set at \$750.00 per month and that for the month of July, the tenant's rent was prorated to \$700.00 as he did not live in the rental unit for the first two days of the month.

The parties further agreed that at the beginning of July the landlord discovered that the bathroom floor had been damaged and required replacement. The landlord testified that the repair were performed and took 3 days, from July 3 to July 6. During this period of time the tenant was given access to the landlord's bathroom. The landlord offered and the tenant accepted \$50.00 in compensation for three days of inconvenience related to the bathroom repairs. The tenant testified that the repair took a total of 6 days and that although he had been compensated for 3 days of inconvenience, he should receive further compensation for the additional 3 days of inconvenience.

The parties further agreed that the rental unit was repainted during the first week of the tenancy. The landlord had tools and painting supplies placed on a makeshift table which was left in the rental unit during this week. The tenant testified that he was unable to unpack his belongings because he had to leave a three foot corridor next to all of the walls to enable the landlord to access the walls for painting and seeks compensation for the inconvenience visited upon him. The landlord acknowledged that

the rental unit was repainted at the beginning of the tenancy, but argued that the makeshift table took up only an 8' x 3' area and did not significantly inconvenience the tenant.

The parties agreed that the rental unit is a non-smoking unit and that at the beginning of the tenancy, there was a mutual agreement that no smoking would take place inside the residential property. The parties further agreed that for a period of approximately 3 weeks, a family member of the landlord stayed with the landlord and smoked outside during that period. There is no allegation that anyone smoked inside the rental unit. The tenant argued that when the guest smoked outside, the smoke would drift in through his open windows and cause significant respiratory distress. The tenant seeks compensation for having been exposed to the smoke and loss of wages for two days in which he was unable to go to work due to his reaction to the smoke.

The parties agreed that the tenant was entitled to recover \$72.78 spent replacing locks on the rental unit.

The parties agreed that on or about October 1 the tenant was served with a one month notice to end tenancy for cause (the "Notice"). The Notice alleges that the tenant has seriously jeopardized the health or safety of the landlord and has put the landlord's property at significant risk. The landlord testified that at the beginning of the tenancy, the parties discussed whether the tenant could use a barbeque on his balcony and the tenant was told that he could not use the barbeque on the balcony due to the landlord's concerns about safety. The landlord claimed that the use of the barbeque violated the fire code and argued that if damage were to result from the use of the barbeque, it would not be covered by the landlord's insurance. The parties agreed that in the fall the landlord's agent and the tenant discussed the barbeque and when the tenant was asked not to use the barbeque on the balcony, the tenant replied, "we will cross that bridge when we come to it." The tenant testified that he used the barbeque in July and has not used it since.

Analysis

I find that the tenant has failed to prove that the repairs to the bathroom took longer than the 3 days for which he has already been compensated and accordingly find that no further compensation is warranted. I find that the tenant experienced some inconvenience during the time that the rental unit was being repainted. However, I find

that the extent of that inconvenience was exaggerated and I find that the tenant's claim to recover all of the rent paid during that period is excessive. I find that \$50.00 will adequately compensate the tenant and I award the tenant that sum.

I find that tenant's claim for compensation for the period of time in which the landlord's guest was smoking outside is without merit. The agreement between the parties prohibited smoking indoors and I find it unreasonable to extend that prohibition to an area outside the residence. I dismiss that claim as well as the wage loss claim associated with it.

As the landlord has agreed to pay for the cost of the locks, I award the tenant \$72.78.

The landlord has the burden of proving that there are grounds to end the tenancy. In the absence of corroborating evidence showing that the presence of the barbeque violates the fire code or invalidates the landlord's insurance and because I accept that the tenant had not used the barbeque for some two months before the Notice was given, I find that the grounds alleged in the Notice cannot be supported. I order that the Notice be set aside and of no force or effect, with the result that the tenancy will continue.

The tenant also applied to recover the \$50.00 filing fee paid to bring this application. The tenant has been partially successful in the application and I find it appropriate to award just one half of the filing fee. The tenant is awarded \$25.00.

The tenant is awarded a total of \$147.78, which represents \$50.00 for the inconvenience of painting, \$72.78 for the locks and \$25.00 for the filing fee. The tenant may deduct this amount from future rent owed to the landlord.

Conclusion

The tenant is awarded \$147.78. The Notice is set aside.

Dated November 17, 2009.

