



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, LRE, MND, MNSD, MNDC, OPC, OLC, RP, RR, FF

Introduction

This hearing dealt with cross applications. The tenant submitted an Application for Dispute Resolution to cancel a notice to end tenancy, restrict the landlord's right to enter the rental unit, make repairs to the rental unit and compensation for loss of a facility or service. The landlord's Application for Dispute Resolution is for an Order of Possession and compensation for damage to the unit.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for cause; to a monetary Order for damages; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition, it must be decided whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order to restrict the landlord's access to the rental unit; for repairs and for a rent reduction due to the loss of a facility or service, pursuant to Sections 27, 29, 32 and 47 of the *Act*.

Background and Evidence

A copy of the tenancy agreement was submitted that was signed by both parties on November 4, 2008 for a month to month tenancy with rent of \$750.00 due on the last day of the month. A security deposit of \$375.00 and a pet damage deposit of \$150.00 were paid on November 4, 2008. The tenancy agreement included in the rent the following services: water, stove and oven, refrigerator, blinds, garbage collection and parking for 1 vehicle.

Also submitted was a copy of 1 Month Notice to End Tenancy for Cause dated October 30, 2009 with an effective vacancy date of November 30, 2009. The notice cites the following as cause for the end of the tenancy: the tenant or a person permitted on the property by the tenant put the landlord's property at significant risk; the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and

jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has caused extraordinary damage to the unit.

The tenant and the landlord agreed the notice was served to the tenant personally on October 30, 2009 at 4:10 p.m.

The landlord submitted the following into evidence:

- 20 photographs showing vehicles parked in a parking stall, blinds, and before and after shots of the painted wood panels;
- A quote to supply and install laminate flooring and supply and install cedar and pine wood walls within a range of \$6500.00 to \$7300.00 plus GST
- Several notices to the tenant announcing the landlord's intent to enter the rental unit;
- A note to the tenant stating the landlord will no longer pay to fix plumbing problems
- A letter to the tenant stating the landlord's displeasure regarding painting the wood panels;
- A notice to all tenants advising the tenants of "regulations";
- A letter summarizing the issues of the disputes between the parties;
- Several hand written notes regarding entry to the unit; parking; curtains; and cleaning the balcony;
- Several invoices from a plumber for parts and labour – no description of service provided;

The tenant provided the following:

- A letter summarizing the issues of the disputes between the parties;
- Letters of character reference for the tenant;
- Copies of handwritten notes also provided by the landlord and some additional ones regarding parking; and
- 34 photographs showing vehicles parked in a parking stall, blinds, and general pictures of the rental unit.

In regard to the Notice to End Tenancy for Cause, the landlord confirmed in testimony that the tenant had not committed an illegal activity in relation to the landlord's claim the tenant has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord.

The landlord also testified that by the tenant continuing to park large vehicles in the parking stall she is putting the landlord's property at significant risk because the parking location is held up by a retaining wall that was just constructed and able to sustain the weight of large vehicles.

The landlord also states that the tenant has damaged the property by painting the antique wood panelling and the wood floor of the rental unit without the landlord's consent. The landlord confirmed that she did not give the tenant time to restore the wood to its original state.

The tenant contends that the landlord provided consent to paint at the time she entered into the tenancy by indicating that landlord had some paint if the tenant wanted to use it. The landlord denies making this statement.

The tenant testified that as of June 7, 2009 the landlord withdrew the tenant's parking "privileges". The landlord stated that despite repeated attempts to have the tenant not park vans and trucks in the stall she had no choice but to not allow the tenant parking.

In the hearing the landlord said she had offered a pass for the tenant to park across the alley, but there was no documentary evidence supporting this. The tenant noted that that would be an acceptable arrangement had she been aware of it.

The tenant testified that the landlord does not provide adequate notice to enter the rental unit for inspections because she will often put the notice in the window and leave it there when the tenant is at work. The tenant may not find it until it is too late to respond.

The landlord stated she posts notices on the door but sometimes she does leave them in the open window. She further testified that she always gives them several days in advance of her visits.

Analysis

Section 47 (e) of the *Act* allows a landlord to end a tenancy if the tenant has engaged in an illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or has jeopardized a lawful interest of another occupant or the landlord.

Since the landlord confirmed that she was not alleging the tenant had committed an illegal activity, this subsection cannot be relied upon to end this tenancy.

Section 47 (d) allows a landlord to end a tenancy if the tenant or someone the tenant has allowed on the property has put the landlord's property at significant risk. The landlord is claiming that the tenant had allowed vans and trucks to be parked in a stall that would not sustain their weight.

The landlord failed to provide any scientific or geological assessment to confirm this claim and as such has failed to show how her property has been put at risk. The landlord cannot rely on this subsection to end the tenancy.

Section 47 (f) states a landlord can end a tenancy if the tenant has caused extraordinary damage to the rental unit and subsection (g) requires the landlord to allow the tenant a reasonable time to repair damage to the rental unit. Based on the landlord's testimony the tenant was not allowed any time to repair the rental unit, I find the landlord cannot rely on this section to cancel the tenancy.

As the landlord has failed to show the Notice to End Tenancy for Cause is in compliance with the *Act* I grant the tenant's application to cancel the Notice to End Tenancy for Cause dated October 20, 2009.

Section 27 states a landlord must not terminate or restrict a service or facility if providing the service or facility is a material term of the tenancy agreement. I accept that the tenancy agreement states that parking for 1 vehicle is included in the tenancy. The clause does not specify what type of vehicles may park in the stall.

From the documentary evidence and testimony I find the landlord has both restricted access to a facility between March 2009 and June 2009 and then withdrawn that service as of June 2009. I find no proof in the documentary evidence of an offer by the landlord to provide the tenant with a parking pass for across the alley.

Based on these findings I find the tenant is entitled to compensation for the restriction and loss of a service or facility from March 1, 2009, the date of the first notice of restriction of parking to small vehicles, to present. I also find the tenant's value of the claim of \$4 per day as reasonable, I therefore find the tenant entitled to 282 days at \$4 per day or a total amount of \$1128.00.

Because the tenant agreed in the hearing that a pass for parking across the alley would be acceptable I order the landlord to provide such a pass in lieu of further compensation or a rent reduction to the tenant.

In regard to the landlord's right to enter the rental unit, the landlord testified that she always provided the written notices 3 or 4 days in advance, however in the some of the notices she provided into evidence the dates on the notices are October 19, 20, and 22 for the same purpose. Section 90 of the *Act* states that documents served by attaching the document to a door are deemed served on the 3rd day.

In addition, the notices submitted into evidence are not compliant with Section 29 of the *Act*. While the notices do include the purpose for entering, they do not provide the date and time of entry. As a result, I find the landlord does not provide adequate notice to enter the rental unit and therefore order the landlord to provide notice of entry in accordance with Sections 29 and 90 of the *Act*.

In relation to the notice from the landlord dated October 8, 2009, regarding the landlord's assertion that any future blockage in the plumbing will be repaired at the tenant's expense, Section 32 and 33 of the *Act* speak to who is responsible for repairs and emergency repairs.

It is a reasonable to say a person cannot predict who is responsible for a plumbing blockage prior to a blockage occurring, as such I order the landlord to assess with a certified professional the full cause of any plumbing issue prior to determining who is responsible for payment of repairs.

Finally, the issue of painting the antique wood walls and floor in the rental unit, in the absence of any written agreement between the landlord and the tenant and in light of the conflicting testimony I find the tenant did not have the consent of the landlord to paint the wood panelling and floors.

Even if the landlord had implied consent to paint the rental unit as suggested by the tenant, I am not convinced that that implied approval would have included painting wood that had never been painted; it may have merely been an implied consent to paint previously painted surfaces only.

Pursuant to Section 32, I find the tenant is responsible to repair the damage to the rental unit caused by her actions, at her own expense. I therefore order the tenant to repair the painted wood walls and floors to a state of reasonable restoration within three months from the date of this decision.

Conclusion

I find that the tenant is entitled to cancel the 1 Month Notice to End Tenancy for Cause dated October 30, 2009 and as such find the tenancy is in full force and effect.

I find that the tenant is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$1178.00** comprised of \$1128.00 for restriction of a service or facility and the \$50.00 fee paid by the tenant for this application. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I find the landlord is not entitled to an Order of Possession; I therefore dismiss her application to end the tenancy.

I also dismiss the landlord's claim for damages for reasons outlined above. As the landlord was not successful in her application, I dismiss her application to recover the filing fee for her application.

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: December 04, 2009.

Dispute Resolution Officer