

DECISION AND ORDERS

Dispute Codes CNC, LAT, LRE, OLC, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenants seeking orders to cancel the Notice to End Tenancy issued to them by the Landlords, to order the Landlords to comply with the Act or tenancy agreement, to make repairs to the rental unit, suspend or set conditions on the Landlords' right to enter the rental unit, authorize the Tenants to change the locks, allow the rent to be reduced and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Are the Tenants entitled to the other relief sought?

Background and Evidence

On November 29, 2009, the Tenants were served with a one month Notice to End Tenancy by the Landlords (the "Notice"). The effective end date indicated in the Notice was December 31, 2009. The reason the Landlords wanted to end the tenancy was indicated in the Notice as the rental unit "... must be vacated to comply with a government order."

In evidence the Landlords submitted a photocopy of the top portion of a letter from the relevant municipality showing the letterhead and addressee Landlords (however, the body of the letter was blocked out), emails between an Agent for the Landlord and her co-worker, excerpts from the municipal zoning bylaws where the rental unit is located, a letter from the Landlords to the Tenants requesting payment of a hydro bill printed on the letterhead of a department of the CRD, a plumbing bill and plumbing permit, and a letter to the Tenants from the Landlords regarding repairs requested by the Tenants.

In evidence the Tenants submitted letters dated December 1st and 18th 2009, sent to the Landlords requesting repairs, a permit inspection for plumbing, and advertisements for renting the rental unit posted on the Internet.

The testimony and evidence of the Tenants was that they have had significant problems with the Landlords, other occupants of the building, and various relatives of the Landlords, and with the condition of the rental unit since they moved in.

The Tenants testified that on numerous occasions the Landlords, or one or more of their relatives, or other parties who live upstairs, entered the rental unit without giving proper (or any) notice as required under the Act. The Tenants were not informed at the outset of the tenancy that the parties living upstairs and the Landlords would be using the washer and dryer in the rental unit. Furthermore, the electric panel box for the entire house is located in the rental unit occupied by the Tenants, and apparently requires frequent resetting of the breakers. The Tenants testified that the Landlords or others have entered the rental unit while the Tenants were naked in bed, when the female Tenant was pumping breast milk for their child and at other inappropriate times.

The Tenants also testified that if they do not answer the door, the Landlords or one of the relatives, will go around the exterior of the rental unit (which is a basement suite in the Landlords' property), knocking or pounding on all the windows. This has occurred even at 1:00 a.m. while the Tenants were in bed sleeping.

The Tenants testified they have a new born baby, born premature, and require hygienic living conditions. The Tenants testified that the plumbing has been a problem in the rental unit, with grey water backing up from the clothes washer, or sink upstairs, up over the sink in the kitchen. They also testified about other serious problems, such as a lack of a smoke detector in the rental unit.

In October of 2009, the Tenants attempted to explain to the Landlords that they have rights under the Act regarding their possession of the rental unit and the Landlords have obligations and rights as well. They acknowledged that the first language of the Landlords is not English, and went to the branch and obtained a copy of a guidebook for landlords and tenants written in the native language of the Landlords. They gave the guidebook to the Landlords and attempted to explain the situation with unwanted entries, and the required repairs to the rental unit, and attempted to resolve the problems with the Landlords, prior to having to file this Application.

Following the issuance of the Notice to the Tenants, the Landlords provided a plumber to fix the plumbing, however, grey water is still backing up over the sink in the kitchen.

The Agents for the Landlords appearing at the hearing did not contradict or question any of the Tenants' testimony or evidence regarding the requested repairs to the unit. The Agents testified that it is an illegal rental unit and the Landlords want the Tenants to leave. They also claimed the Landlords' son was going to be moving into the rental unit.

Throughout the hearing the Agents continually asked how they could end the tenancy to evict the Tenants, without challenging or refuting any of the evidence of the Tenants. They accused the Tenants of trying to "take advantage" of the Landlords.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Notice to End tenancy is not valid, and I order it to be cancelled. It is of no force or effect. There is insufficient evidence to show there is any government order that the Tenants must vacate the rental unit. I find it is likely the Landlords have fraudulently attempted to end the tenancy. They have provided a portion of a letter, claiming it to be an order for the rental unit to be vacated, when in fact no such order exists.

There was also a hydro bill printed on the letterhead of the CRD, where one of the Agents for the Landlords is employed. The Agent tried to explain this as, "... I had no other paper..." If so, she could have simply printed the letter regarding a hydro payment on the back of the letterhead, rather than attempting to make the letter look like an official demand for payment from the CRD. At best this letter is intentionally misleading, at worst it is fraudulent. If the Landlords are claiming the Tenants have not paid a hydro bill, they should be presenting copies of the hydro bill itself to the Tenants, not sending them misleading letters.

I order the Landlords to comply with the Residential Tenancy Act. The Landlords have a duty to comply with the Act. The fact the Landlords have rented out an illegal suite does not allow them to end the tenancy with these Tenants, unless there is a government order to do so, or another reason to end the tenancy as allowed under the Act. The Landlords knew, or ought to have known, the legality of renting the unit prior to renting it out.

Based on the demeanour of the Agents for the Landlords and their testimony and the Landlords' evidence, I find it is more likely that the Landlords are simply trying to evict

the Tenants because they have requested repairs to the rental unit which the Landlords are unwilling to pay for. I also accept the evidence of the Tenants that the Landlords had already tried to advertise the rental unit as being available to other renters, which contradicts the assertion of the Landlords that the unit must be vacated.

I find the Landlords are in breach of section 32 of the Act, as they have failed to provide a rental unit which complies with the health, safety and housing standards required by law. I further find that the Landlords have breached sections 28 and 29 of the Act regarding the Landlords' right to access the rental unit and the Tenants' right to quiet enjoyment of the rental unit.

Therefore, I order that the rent for the rental unit is reduced retroactively to December 1, 2009, by 50%, to \$450.00 and shall continue to be \$450.00 per month until the Landlords comply with the Act and this order, and make all the necessary repairs listed below. The Tenants may deduct the \$450.00 for December, 2009, and \$450.00 for January 2010, from rent payable for February 2010. Therefore, no rent is payable for February 2010, and thereafter the rent will be \$450.00 per month until the Landlords comply with the Act and this order and make all the necessary repairs listed below.

I order that the Tenants are allowed to change the locks to the rental unit. Unless there is an emergency, if the Landlords wish to access the rental unit they must comply with the Act and give written notice of entry, at least 24 hours before they enter and in accordance with the service provisions of the Act. The Tenants must not unreasonably restrict the Landlords or workers entering the unit to perform repairs provided this notice to enter has been given.

I order the Landlords to provide quiet enjoyment of the rental unit to the Tenants in accordance with the Act and must inform the other occupants of the property and their relatives to abide by the Act.

I order the Landlords to hire a professional plumber to:

- a) repair the plumbing so that grey water from any part of the building does not back up into the sink of the rental unit, and all potable water and waste water flows properly in accordance with the applicable codes and good sanitation and healthy living conditions;**
- b) properly repair the toilet to stop it from leaking; and**
- c) repair or replace the knobs as required on the taps in the bathtub.**

I order the Landlords to hire a professional electrician to:

- a) install smoke detectors in the rental unit which comply with the applicable code;**
- b) inspect and repair or replace the breaker box so it complies with the applicable code and provides sufficient electrical power to meet the demands of the unit and building;**
- c) install a thermostat or provide an alternate way that allows the Tenants to control the heating of the rental unit;**
- d) repair or replace the stove and oven in the rental unit; and**
- e) repair or replace the washer and dryer in the rental unit.**

I also order the Landlords to have all the above described repairs done before February 28, 2010. If the Landlords fail to have these repairs done before February 28, 2010, the Tenants have leave to apply for further rent reductions and additional monetary compensation from the Landlords.

The Tenants may also deduct an additional \$50.00 from one rent payment to recover their filing fee.

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: January 14, 2010.

Dispute Resolution Officer