



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

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

Introduction

This hearing was scheduled to hear the tenant's application to cancel a Notice to End Tenancy for cause; for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to comply with the Act, regulations or tenancy agreement, make repairs, provide services or facilities required by law, suspend or set conditions on the landlord's right to enter the rental unit; for authorization to change the locks and reduce rent payable; and, for recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

At the commencement of the hearing the landlord requested that an agent act on her behalf; however, shortly thereafter, the landlord decided to represent herself. The landlord also requested an Order of Possession should the tenant's application to cancel the Notice to End Tenancy be dismissed.

I heard that both parties served their evidence upon the other party late. Both parties requested and consented to the submissions of both parties being accepted and considered in making this decision. I have considered all of the documentary evidence provided to me for this hearing.

Issues(s) to be Decided

1. Should the Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the tenant entitled to a Monetary Order for incomplete repairs, loss of quiet enjoyment, loss of laundry facilities and loss of use of the backyard?
4. Is the tenant entitled to reduce future rent payable?
5. Has the tenant established that Orders are required for the landlord to comply with the Act, regulations or tenancy agreement; for repairs to the rental unit; and, for the landlord to provide services or facilities?
6. Has the tenant established a it is changing the locks is warranted?
7. Is it necessary to set conditions on the landlord's right to enter the rental unit?

Background and Evidence

I heard undisputed testimony as follows. The tenancy commenced July 1, 2009 and the tenant is required to pay rent of \$800.00 on the 1st day of every month. There is no written tenancy agreement. The rental unit is a basement suite located in a house occupied by the landlord. There is a locking interior door that provides the tenant access to the shared laundry room and the landlord's living area. In the early months of the tenancy, the landlord and tenant enjoyed a friendly relationship and until December 21, 2009 the tenant was provided access to the laundry facilities via the interior door that was left unlocked. The landlord and tenant have a mutual friend and in November 2009 the landlord and the mutual friend had a falling out. The landlord asked that the tenant not have the mutual friend visit her at the rental property.

Notice to End Tenancy

On January 5, 2010 the landlord personally served a *1 Month Notice to End Tenancy for Cause* (the Notice) upon the tenant. The Notice has an effective date of February 28,

2010 and indicates that the reasons for ending the tenancy are that the tenant, or a person permitted on the property by the tenant, has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord; and
- Seriously jeopardized the health or safety or lawful rights of another occupant or the landlord.

The landlord stated that the tenancy should end because:

1. The tenant became intoxicated and acted inappropriately toward the landlord's nephew during a Thanksgiving dinner the tenant was invited to attend at the landlord's home.
2. The tenant and a mutual friend entered the landlord's home uninvited in November 2009.
3. On December 21, 2009 the tenant's guest entered the landlord's home and proceeded to the landlord's bedroom to talk to her about the relationship with the tenant. Later, the tenant and the tenant's guest had been drinking and were loud, swearing and taunting the landlord from the sundeck to the point where the police were called.
4. The tenant smokes marijuana in the rental unit.
5. The tenant's guests have criminal records and the landlord submits that it is unsafe for the landlord and her children to be subjected to people with criminal backgrounds.

The tenant responded to the landlord's reasons for ending the tenancy as follows:

1. The tenant briefly responded to the landlord's allegations concerning the tenant's behaviour on Thanksgiving by stating the incident was forgiven.
2. The mutual friend came to the property to visit the landlord in early November 2009 and invited the tenant to join them.

3. On December 21, 2009 the tenant acknowledged drinking alcohol but denied that her guest went into the landlord's home. The tenant claimed that when the police arrived she and her guest were not doing anything wrong and that the police call was nothing more than an unsubstantiated noise complaint.
4. The landlord wants to end the tenancy because the mutual friend showed interest in the tenant and the landlord and mutual friend had a falling out.

Repairs

The tenant is seeking \$300.00 in compensation for repairs the landlord agreed to make at the beginning of the tenancy which were not made. The tenant requested the following issues be addressed, in writing, on January 5, 2010: paint the bathroom, repair splintered doorframe, repair hole in wall, repair broken blinds, repair the light in fridge and repair the toilet. The tenant's letter also states that repairs must be done when the tenant is home and that the tenant will not be giving permission to the landlord for times when the tenant is not home.

The landlord's written submissions indicate that the tenant had told the landlord not to worry about the certain repairs when she moved in and that fridge and toilet were in working order.

Loss of quiet enjoyment

The tenant is seeking \$1,500.00 in compensation for loss of quiet enjoyment related to constant harassment by the landlord during the months of November and December 2009. The tenant stated during the hearing that the landlord and a friend entered the rental unit on November 28, 2009 uninvited; the landlord has swore at and called the tenant profane names; and, the landlord entered the rental unit illegally when the tenant was out of town. The tenant's mother appeared as a witness and stated that it was evident somebody attempted to enter the rental unit while her daughter was out of town.

The landlord claims that the tenant invited the landlord and her friend in on November 28, 2009 as the tenant was still up and playing music. The landlord claims that they

proceeded to have more drinks and danced. The landlord acknowledged that her daughter opened the interior door to the rental unit when the tenant was away and stated that the tenant should not have left the door unlocked.

Laundry

The tenant is seeking compensation of \$120.00 per month for loss of laundry facilities six out of seven days per week. The tenant claimed that when the tenancy commenced the parties agreed that the tenant could do laundry every day as the tenant works in health care and must wash her scrubs frequently. On December 21, 2009 the landlord locked the interior door and told the tenant that the tenant could use the laundry machines only once per week.

The landlord was of the position that the terms of the tenancy permitted the tenant to have laundry access only one day per week. The landlord did not deny that the tenant had been previously granted access to the laundry machines every day but was of the position she was merely enforcing the terms of the tenancy agreement.

Loss of backyard access

The tenant is seeking compensation of \$50.00 for loss of use of the backyard. Neither party provided much testimony concerning this issue at the hearing; however, the landlord had submitted that the backyard was for use by the landlord and that the tenant had used the backyard in the past as a guest of the landlord.

Analysis

Notice to End Tenancy

Where a Notice to End Tenancy for Cause is disputed, the landlord has the burden to show the Notice was issued for the reason(s) as stated on the Notice and as provided under section 47 of the Act. The burden of proof is based on the balance of

probabilities, meaning I must find it more likely than not that the events occurred as described by the landlord.

Based upon all of the testimony and evidence before me, I make the following findings. I am satisfied that the tenant has demonstrated poor behaviour towards a member of the landlord's family member while intoxicated on a previous occasion and I have taken into consideration that the tenant has acknowledged drinking on the evening of December 21, 2009 when the alleged disturbance occurred.

I also noted that the tenant was very quick to dismiss to the landlord's description of the Thanksgiving incident and that the tenant described the rejected rent cheque as being the landlord's problem in a letter to the landlord. Further, the landlord provided evidence from a social networking site that the tenant thought poorly of the landlord and appeared to want to irritate the landlord; yet, the tenant did not refute this evidence except to say the statements were intended to be viewed by her friends only. Thus, I have found that the tenant does not readily accept sufficient responsibility for her actions where appropriate and I have significant reservations that the tenant would acknowledge or accept responsibility for other actions for which she is responsible. In contrast, I found the landlord's testimony to be more forthcoming and credible. Therefore, I prefer the landlord's version of events over that of the tenant and I find the tenant significantly disturbed the landlord on December 21, 2009.

In light of the above, I find the landlord was justified in issuing a *1 Month Notice to End Tenancy for Cause*. Therefore, I uphold the Notice and grant the landlord's verbal request for an Order of Possession effective February 28, 2010.

Repairs

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The parties were in dispute as to whether certain repairs were to be made at the beginning of the tenancy. The burden is upon the tenant to show the landlord agreed to make certain repairs or knew that certain repairs were required to comply with health, safety and building laws and the landlord failed to complete such repairs and that this failure caused the tenant to suffer damages or loss. I find the disputed testimony insufficient to establish that the landlord agreed or knew that certain repairs were required under the terms of the tenancy agreement or to comply with the Act before the tenant wrote the landlord on January 5, 2010. I also find that in the letter of January 5, 2010 the tenant prohibits the landlord from making any repairs while the tenant is not home. Thus, I find the tenant inhibited the completion of the repairs after January 5, 2010.

Where a tenant requires repairs to be made the tenant should attempt to minimize their loss by first contacting the landlord in writing and provide the landlord a reasonable time and access to complete the repair. If the landlord will not make certain repairs, the tenant may seek a repair order by making an application for dispute resolution.

Since the tenancy is about to end, I do not make any repair orders against the landlord. I do not award the tenant a rent abatement for the past six months as I was not satisfied that the tenant requested repairs before January 5, 2010 and I found the tenant inhibited the landlord's ability to make repairs. Therefore, this portion of the tenant's claim is dismissed.

Loss of quiet enjoyment

Upon hearing from both parties, I find the disputed events of November 28, 2009 insufficient to find the landlord entered the tenant's rental unit without consent as opposed to being a guest of the tenant as the parties had previously visited and socialized together. I accept that the landlord's daughter opened the tenant's door while the tenant was out of town; however, I also heard that the tenant left the door unlocked. I find the tenant failed to take reasonable action to lock the door and minimize her loss. I do not find sufficient evidence of constant harassment as alleged by the tenant in her application. I dismiss this portion of the tenant's application.

Laundry

The terms of the tenancy agreement with respect to the provision of laundry facilities was in dispute. However, upon hearing from both parties, I find the actions of both the tenant and landlord before December 21, 2009 to be more consistent with the tenant's statements that laundry was to be provided to her every day. Accordingly, I find that the landlord restricted a service or facility to be provided to the tenant as part of her tenancy agreement.

Under section 27(2) of the Act, a landlord may terminate or restrict a service or facility, if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I find the landlord violated section 27(2) of the Act by not giving the tenant sufficient notice that the laundry service would be restricted to one day per week and did not reduce the rent payable by an amount to equalled the reduced value of the tenancy.

I do not find the tenant provided sufficient evidence that the value of a tenancy with laundry service once per week has a value of \$120.00 less per month than a tenancy that provides laundry service 7 days per week. I find it more reasonable that the reduced value of the tenancy to be \$80.00 per month. I award the tenant \$80.00 per month from December 21, 2009 through February 28, 2010 which I calculate to approximate \$226.00.

In addition to this monetary award to the tenant, the landlord is also ORDERED to provide the tenant with laundry access one day per week.

Loss of backyard

I did not find sufficient evidence that the tenant was entitled to use of the backyard, that the tenant lost use of the backyard or the value of any such loss. Therefore, I dismissed this portion of the tenant's claim.

Filing fee

Since the tenant was partially successful with her monetary claim, I award the tenant \$24.00 towards the filing fee paid for this application.

In light of the above findings, the tenant is entitled to recover a total of \$250.00 from the landlord.

Conclusion

The tenancy shall end February 28, 2010 and the landlord is provided an Order of Possession effective February 28, 2010 to serve upon the tenant.

The tenant has been provided compensation for restricted laundry services and the remainder of the tenant's monetary claims were dismissed without leave to reapply.

The tenant has been provided a Monetary Order in the amount of \$250.00 to serve upon the landlord.

In addition to the monetary award provided the tenant, the landlord is ORDERED to provide the tenant with laundry services one day per week.

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: February 16, 2010.

Dispute Resolution Officer