

INTERIM DECISION

Dispute Codes CNC MNDC OLC ERP RP OPT RR FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain an Order to cancel a notice to end tenancy issued for cause; and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and an Order to have the Landlord comply with the Act, make emergency repairs, and to make repairs to the unit; and to obtain an Order of Possession; and allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and recover the cost of the filing fee from the Landlord for this application; and other reasons.

Service of the original and amended hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Landlord on February 5, 2010 and February 10, 2010. The Landlord confirmed receipt of the original and amended applications.

The Landlord, Board 1, Board 2, Board 3, Board 4, male Tenant, female Tenant, and the Advocate, appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Are the Tenants entitled to an Order to cancel a notice to end tenancy issued for cause pursuant to section 47 of the *Residential Tenancy Act*?

Are the Tenants entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act*?

Are the Tenants entitled to Orders to have the Landlord comply with the Act, make emergency repairs, and to make repairs to the unit; and to obtain an Order of Possession; and allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided under sections 62, 32, 33, and 65 of the *Residential Tenancy Act*?

Background and Evidence

The Tenants entered into their first tenancy agreement on August 1, 2007 to occupy unit # 146 and paid a security deposit of \$458.00 on July 16, 2007. The Tenants moved into unit #108 on October 1, 2008 without entering into a new tenancy agreement. The current monthly rent is payable on the first of each month in the amount of \$577.00.

The Landlord confirmed that she issued the Tenant's a 1 Month Notice to End Tenancy and served the notice by placing it through the Tenant's door jam at their temporary location, Unit # 119 on February 8, 2010.

The Landlord and Board members confirmed the rental unit is a three level townhouse that is approximately eighteen years of age with three bedrooms, one bathroom, a kitchen and living room. The bathroom is located on the second floor directly above the kitchen which is located on the first floor.

The Landlord advised that she was told by the Tenants' neighbour the Tenants were experiencing a water leak problem. The Landlord contacted Board 2 and Board 3 to inform them of the potential water leak after which the Landlord and Board 2 attended the rental unit on January 8, 2010 to inspect the unit and found blistered paint on the kitchen ceiling directly below the washroom. Board 2 and Board 3 immediately began to remove the toilet and tiles in the bathroom to investigate the problem.

The Landlord confirmed there was only one bathroom in the rental unit so the Tenants and their two young children were asked to temporarily relocate to unit # 119 on January 8, 2010 and the Tenants were initially told they could keep most of their possessions in the rental unit during the repairs. The Tenants were allowed to access the rental unit to use their washer and dryer and to have access to their possessions as required throughout the restoration.

Board 2 testified the repairs involved the removal of bathroom tiles and drywall in the kitchen and bathroom to expose the damages which resulted from a leaking water pipe in the shower. The demolition began on January 8, 2010.

The Landlord testified that the plumber first attended the rental unit on January 14, 2010.

Board 2 testified that the communication with the Tenants broke down after a conversation with the Tenants on January 18, 2010 when "the Tenants decided there was mould in the rental unit". Board 2 argued the Tenants also mentioned they did not

want to remove all of their possessions from the rental unit because they stated that the last time they had moved they had lost some of their possessions. It was at this time the Board made the decision to have the Tenants remove all of their possessions from the unit as the Board and Landlord did not want to assume responsibility for the Tenants' possessions, that they wanted the contractors to have unrestricted access to the rental unit, and they did not want to deal with the alleged presence of mould.

Board 2 advised that it was after the January 18, 2010 meeting they decided to have their insurance company deal with the repairs. The insurance company has since hired a professional restoration company to complete the repairs.

Board 1 continued to argue the Tenants were asked to remove all of their possessions to protect the health and safety of the Tenants and their children and to protect the Tenants' possessions. Board 1 confirmed the restoration work is confined to the kitchen and bathroom areas.

The Landlord confirmed the notice to end tenancy was issued on February 8, 2010, three days after the Tenants filed for dispute resolution and four days after the second written request to remove all the Tenants possessions was issued on February 4, 2010. The Landlord confirmed the communications between the parties had broken down to where the Landlord was not attempting to contact the Tenants nor were the Tenants attempting to contact the Landlord or board members other than written communication.

The Landlord referred to the documentary evidence in reference to a February 18, 2010, letter issued to the Tenants demanding the Tenants remove their possessions from unit #108 and inform the Landlord, in writing by February 22, 2010, of the Tenants choice to permanently relocate to unit #119 or temporarily relocate with the option to move back into #108 once the repairs are completed. The Landlord confirmed she was personally served by the male Tenant with a handwritten letter of response on February 23, 2010 and that this response letter was presented and discussed that evening at the board of directors' meeting. The original letter was later returned to the Tenants requesting the Tenants' signatures however it was never signed and returned to the Landlord.

The female Tenant testified they noticed the water leak in December 2009, during a time when the Landlord was out of town so the Tenants informed the Landlord's husband and her son of the problem while the Landlord's husband was attending to maintenance issue at the rental unit next door to the Tenants. The female Tenant argued that she was told by the Landlord's husband that they would have to wait until the Landlord returned from her trip before anything could be done with the problem.

At this point the hearing time was about to expire. The Landlord confirmed the repairs were ongoing and the restoration company should be finished the repairs in the next four or five days.

The Tenants stated that they would need two days to relocate back into unit #108 once the repairs have been completed.

Analysis

All matters were not reviewed due to time constraints therefore the hearing has been adjourned and scheduled to reconvene in accordance with the section 64 of the *Residential Tenancy Act*.

Based on the aforementioned I make the following interim Orders:

The Landlord is hereby ordered to serve the Tenants, in person, with written notification the repairs in unit # 108 are complete and unit #108 is ready to be occupied.

The Tenants are hereby ordered to vacate unit #119 by having all of their possessions removed from unit #119 and relocated to unit #108 no later than two days after the day they are served with the notice the repairs are completed. (e.g.: If the Tenants are personally served with the notice on Friday, the Tenants are to be vacated from unit #119 no later than Sunday evening at 11:59 p.m.)

Conclusion

This hearing is adjourned to the date specified in the enclosed Notice of Adjourned Hearing.

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: March 23, 2010.

Dispute Resolution Officer