

DECISION

Dispute Codes CNC, MNDC, OLC, RP, RPP, LRE, RR

Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause*, for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; for Orders to the landlord to comply with the Act, regulations or tenancy agreement, to make repairs, to return the tenant's property, to suspend or set conditions on the landlord's right to enter the rental unit; and, authorization to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other party's submissions.

Issues(s) to be Decided

1. Are there grounds to set aside the Notice to End Tenancy for cause?
2. Has the tenant established an entitlement to compensation from the landlord?
3. Orders necessary for compliance, repairs and return of property.
4. Should conditions be imposed upon the landlord with respect to the landlord's right to enter the rental unit?
5. Has the tenant established an entitlement to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

I was provided undisputed evidence as follows. The month-to-month tenancy commenced June 30, 2009 and the tenant is required to pay rent of \$336.00 per month. On January 31, 2010 the landlord personally served the tenant with a *1 Month Notice to End Tenancy for Cause*. The tenant's name is spelled incorrectly on the Notice.

I also heard undisputed testimony that on January 9, 2010 a water leak occurred in the rental unit and caused water to flood the bathroom, hallway, bedroom and crawl space. A restoration company was called to remedy the damage including leaving two blowers and one dehumidifier in the rental unit until January 25, 2010. From January 21, 2010 through January 23, 2010 the tenant was put up in a hotel for three days at the landlord's expense. The restoration company has yet to complete the outstanding tasks of cleaning and installing baseboards. The restoration company also has some of the tenant's personal items that were removed during the restoration work.

The tenant is requesting the landlord compensate her \$450.00 for the two weeks of inconvenience during the restoration work, constant disruptions, a replacement hose for her vacuum, and a broken printer. The monetary claim includes a component for increased hydro consumption and the tenant provided a copy of two hydro bills as evidence. The tenant claims that someone used her vacuum based upon her inspection of the contents of the vacuum bag and that the vacuum hose needs replacement as a result. The vacuum is approximately 10 years old. The tenant claims that before the flood her printer worked and after the restoration company had been in and moved her desk the printer no longer works. The printer is approximately three years old. The acknowledged that she does not have tenant's insurance.

The tenant is also seeking to have the restoration company clean her property and the unit, including a rust stain on a blue rug, and for the restoration company to return her white rug and drapes that were removed from the rental unit. The tenant is seeking to have the landlord remove or repair the built in cabinet, attend to the toilet that is constantly running, repair the screen door handle, reported that she believes there is an issue with the condenser on the refrigerator.

The tenant testified that she had changed the locks to the rental unit and has provided the landlord with a copy of the key. The tenant was of the belief that somebody had been in her unit while she was out and her discovery of a muddy boot print on the

carpet. The tenant also claimed that personal documents were missing and was of the position this was evidence the landlord has been entering her unit.

The landlord testified that the restoration company had originally estimated the remediation would take two days but that it took two weeks due in part to the damage being more extensive than originally thought but also because the tenant interfered with the restoration company staff while they were trying to work and because the tenant has a large amount of personal property in the small rental unit. The landlord was of the position that the tenant is not entitled to compensation since the tenant delayed progress of the restoration work and was put up in a hotel at the landlord's expense as a result. The landlord explained that the restoration company staff refused to return to the rental unit due to the tenant constantly complaining, questioning, requesting workers perform work outside of the scope of their assignment and comments that the workers were not doing the work properly. The landlord also testified that the painter working on the built in cabinet had also refused to return to the rental unit for similar reasons.

The landlord was agreeable to calling the restoration company back to the rental unit to finish the restoration work and cleaning with assurance the tenant would not interfere with the work in any way. The landlord did not agree that the built in cabinets need to be removed but agreed that the cabinet needs to have the painting finished and will call the painter back with the assurance the tenant will not interfere with the painter in any way. The landlord also agreed to investigate the tenant's complaints concerning the toilet and repair the screen door handle but was of the position that the refrigerator is still running and will address any service issues when they arise.

The landlord testified that they have enquired with the restoration company and the painter about using the tenant's vacuum and they both vehemently denied using the tenant's vacuum as the restoration company has their own vacuums and the painter did not have any need to use the vacuum.

The landlord testified that they are very familiar with the section of the Act that provides for a landlord's restricted right to enter a rental unit and deny ever entering the rental unit without proper notice or the tenant's consent.

In support of her request to have the built in cabinets disinfected or removed, the tenant obtained a doctor's note from her doctor in Vancouver. As evidence for the hearing, the landlord provided copies of various correspondence from the tenant requesting removal of the built in cabinets since shortly after the tenancy commenced.

Analysis

During the hearing, the Notice was set aside on the basis that it did not correctly identify the tenant. Accordingly, I did not deal with the reasons for the issuance of the Notice. Since the Notice was set aside, the tenancy continues. The landlord is at liberty to re-issue another Notice if the landlord wishes to pursue ending the tenancy.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Under the Act a tenant is entitled to quiet enjoyment of the rental unit which includes exclusive possession of the rental unit subject to the landlord's restricted right to enter the rental unit. Residential Tenancy Policy Guideline 6 provides that in order to find a breach of quiet enjoyment, the tenant must establish a loss that is more than temporary inconvenience or discomfort. Rather, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Substantial interference would give rise to compensating the tenant for loss of quiet enjoyment.

In this case, I am satisfied that the tenant was required to leave the rental unit for three days in order to allow the restoration work to proceed and that this is substantial interference. However, I am also satisfied that the tenant's costs for staying in a hotel were paid for by the landlord and I do not find a monetary loss to the tenant for those three days. Therefore, I do not award the tenant compensation for the three day period during which time the tenant stayed in a hotel.

Upon hearing from the parties and considering all of the evidence before me, I accept that the tenant interfered with the restoration staff and likely hindered progress of the restoration work. Therefore, I find the inconvenience of having frequent disruptions and blowers running for many days was exacerbated by the tenant's actions and I do not find the tenant met the fourth part of the test outlined above with respect to the inconvenience and disruption she experienced.

Upon review of the hydro bills, I am satisfied that the blowers and a dehumidifier were running on the tenant's electricity for which she had an increase of hydro consumption of \$38.54 from November 2009 to January 2010. As I have found the tenant partially responsible for hindering the progress of the restoration, I find the landlord obligated to

compensate the tenant one-half of the increased hydro consumption. The tenant is awarded \$18.27 for increased hydro consumption related to the restoration work.

Other than recovery of the award for increased hydro consumption of \$18.27 I do not find the tenant entitled to reduce future rent payable. Again, this is because I had determined that the tenant has played a role in causing the restoration and repair workers to not finish the required work in a timely manner. The tenant is authorized to make a one-time deduction of \$18.27 from a subsequent month's rent payable in satisfaction of this award.

I am satisfied that additional restoration work and cleaning needs to be performed in the rental unit and I accept that the landlord may be able to have this work completed provided the tenant does not interfere with the restoration company staff. I am satisfied that the restoration company has items belonging to the tenant that must be returned.

Upon review of the evidence, I do not find the doctor's recommendation that the built in cabinets need to be disinfected or removed to be based upon evidence other than what the tenant told the doctor. I do not accept that the doctor inspected the unit before making the recommendation. However, I am satisfied that painting of the built in cabinet needs to be completed and that the tenant must not interfere with the painter while this work is performed. Any issues the tenant may have with the work performed by the restoration company or painter should be addressed to the landlord.

I am satisfied the toilet needs to be investigated by the landlord and the screen door handle requires additional repairs. As the refrigerator is still working to keep foods cold I do not find the landlord obligated to repair or replace the refrigerator at this time.

I do not find the disputed positions with respect to the vacuum sufficient to establish the landlord owes the tenant compensation for a new vacuum hose. Furthermore, the hose is approximately 10 years old and purchase of a new hose would put the tenant in an enriched position. Similarly, I find the tenant failed to establish that the landlord's

actions caused the tenant's printer to stop working and I do not find the landlord obligated to compensate the tenant for the printer.

In light of the above findings, I make the following ORDERS upon both parties:

The landlord is ORDERED to perform the following within 30 days of the date of this decision:

1. Have the restoration company return to the rental unit to complete the restoration work and cleaning.
2. Instruct the restoration company to return the tenant's personal property.
3. Have the painting completed on the built in cabinet.
4. Investigate the tenant's complaint regarding the toilet and make necessary repairs.
5. Repair the screen door handle.

In order to facilitate the repairs requested by the tenant, the tenant is ORDERED to:

1. Not interfere with the restoration company or its staff in any way during the completion of the restoration work and cleaning. This includes distracting workers, giving instructions to workers (unless they specifically ask for instructions from the tenant), complaining to the restoration company or its staff in person, over the telephone, or via email.
2. Not interfere with the painter of the built in cabinets in any way. This includes distracting the painter, giving instructions to painter (unless the painter specifically asks for instructions from the tenant), complaining to the painter in person, over the telephone, or via email.
3. Not to hinder or restrict the landlord's ability to enter the rental unit to facilitate the repairs and cleaning provided the landlord has complied with section 29 of the Act.
4. Not to change the locks again without the landlord's prior written consent.

The parties are also informed that a violation of an Order issued by a Dispute Resolution Officer is grounds for the landlord to issue a 1 Month Notice to End Tenancy for Cause to the tenant. The parties are informed that a violation of an Order issued by the Dispute Resolution Officer may be grounds for the tenant to make a subsequent application and seek monetary compensation from the landlord.

I do not find sufficient evidence that the landlord has violated the Act with respect to entering the rental unit. However, as information for both parties, I have reproduced section 29 of the Act below:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As information for both parties, and in particular, for the tenant, I have also reproduced the section of the Act that provides for the landlord's and tenant's obligations to repair and maintain the rental unit. Section 32 provides:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Conclusion

The Notice to End Tenancy issued January 31, 2010 has been set aside due to incorrect identification of the tenant. The tenant has established an entitlement to compensation of \$18.27 from the landlord for a portion of the increased hydro costs incurred by the tenant. The remainder of the tenant's monetary claims and request for a rent reduction are dismissed. Both the landlord and tenant have been issued ORDERS with respect to facilitating restoration, repairs and return of the tenant's personal property. I set no addition conditions upon the landlord's restricted right to enter the rental unit; however, the tenant has been ordered to not change the locks to the rental unit again without prior written consent.

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 24, 2010.

Dispute Resolution Officer