

DECISION

Dispute Codes:

CNR, MNDC, OLC, RP, LRE, RR

Introduction

This is the Tenants' application to cancel a Notice to End Tenancy for Unpaid Rent; for a monetary order for compensation for damage or loss; for an Order that the Landlord comply with the *Residential Tenancy Act* (the "Act") and make repairs to the rental unit; for an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

The Landlord's agent affirmed to interpret the Cantonese language to the English language and the English language to the Cantonese language to the best of her ability. The Landlord, Tenants and the Tenant's advocate gave affirmed testimony and this matter proceeded on its merits.

Preliminary Matter

The Landlord issued a Notice to End Tenancy on February 1, 2010, for unpaid rent for the month of February in the amount of \$1,050.00. Rent was due on the 1st day of each month, and therefore the Notice to End Tenancy is not a valid notice, as the Tenants had until midnight, February 1, 2010 to pay February rent. Therefore, the Tenant's application to cancel the Notice to End Tenancy for Unpaid Rent is granted.

Issues to be Decided

- Are the Tenants entitled to compensation for damage or loss?
- Should the Landlord be ordered to comply with the Act and make repairs to the rental unit?
- Should the Landlord's right of access to the rental unit be suspended, or should there be conditions set with respect to that right?

- Are the Tenants entitled to a reduction in rent for non-provision of cable services?

Background and Evidence

The tenancy started on January 1, 2010. Monthly rent is \$1,050.00. The Tenants paid a security deposit in the amount of \$525.00. The rental unit is in the lower floor of a house. The Landlord lives on the top floor.

The Tenants gave the following testimony

When the Tenants moved into the rental unit on January 1, 2010, the Landlord was out of the country. The Landlord did not return until January 16, 2010. There was no Condition inspection Report completed at the commencement of the tenancy.

When the Tenants moved in, the rental unit was greasy, dirty and mouldy. The Tenants spent 10 hours cleaning the rental unit, and during that task discovered the following deficiencies or issues:

- The oven was damaged. Rust and insulation was visible on the inside of the oven, causing a fire hazard, and the oven was filthy.
- The burners on the stove top were not useable. One burner was labeled defective and one of the others had exposed wires. They were also filthy.
- The Tenants discovered roach poison under the refrigerator, inside the kitchen cupboards and on the backsplash of the kitchen counter. The kitchen was dirty and greasy, with crumbs in the cupboards and filth under the fridge. There was evidence of cockroaches.
- There was a box of roach poison under the kitchen sink.
- The drip tray under the fridge was filthy and full of stagnant water.
- The sinks in the kitchen and bathroom were clogged with hair and debris. When the Tenants attempted to drain the sinks, filth backed up into the sinks.
- There was mildew around the windows.

The Tenants completed a Condition Inspection Report on their own on January 10, 2010 and provided the Landlord with a copy on January 19, 2010, under cover of a letter. It was their hope that they could have discussions with the Landlord about getting a new stove and spraying the rental unit for cockroaches. The Tenants also wrote that they did not have cable, as was promised, and sought a rent reduction of \$30.00 per month in lieu of this service.

On January 28th the Tenants left the rental unit for a brief time and placed an elastic band in the door jam. When the Tenants returned, the elastic band had fallen to the floor. The Tenants believe that the Landlord had entered the rental unit without their permission. On January 29, 2010, at 4:30 a.m., the male Tenant saw Mr. Gee peeping in their window wearing only a bathrobe. On another occasion the male Tenant saw someone he believes to be the Landlord in the early hours of the morning.

By February 1, 2010, the Landlord had not replied to their letter dated January 19, so they sent him a note requesting a meeting before they paid their February rent. The Landlord replied that his agent was away until February 10th and that they could meet after she returned.

On February 4, 2010, the Tenants filed for Dispute Resolution.

The Tenants paid the Landlord \$1,620.00 in rent on March 1, 2010. The Landlord accepted the rent payment and asked the Tenants to withdraw their application.

The Tenants do not have use of a stove, and have not had use of a stove since January 1, 2010. The Tenants have all of their food and kitchen supplies stored in plastic tubs and on shelves in the living room because of the cockroaches.

The Tenants agree that they are currently in arrears for unpaid rent in the amount of \$480.00, and ask that this amount be offset against any monetary award they are granted.

The Landlord and the Landlord's agent gave the following testimony

There was a misunderstanding with respect to the time the Tenants would be moving in. The Landlord's agent thought the Tenants would be moving in at 1:30 or 2:00 p.m., but they were already moving in when she arrived at noon. The Landlord's agent and the Tenants did a walk through prior to the beginning of the Tenancy. When the Tenants moved in, the rental unit was reasonably clean except for some mildew on the windows. The Landlord's agent and the Tenants did not move the fridge to see if the previous tenants had cleaned under the fridge. The oven and the stove top appeared to be fine, with the exception of one of the elements, which was clearly marked.

The Landlord did not do a move-out Condition Inspection Report with the previous tenants.

The Landlord did not receive a copy of the Tenants' Condition Inspection Report with the letter dated January 19, 2010.

The Landlord denied entering the Tenants' home on January 28, 2010. The Landlord testified that he was checking the Tenants' window to ensure it was secure on the morning of January 29, 2010. He stated that he was concerned about security because his living quarters are connected to the Tenants' and the Tenants always left their window open.

The Tenants have a cat, which is not allowed under the tenancy agreement.

The Landlord agreed that the stove should be replaced. The Landlord stated that the previous tenants had cockroaches.

The Landlord was not aware that the sinks were clogged.

The Landlord and the Tenants had a verbal agreement that they would be supplied with cable in return for supplying the Landlord with internet. The Landlord stated that the Tenants were supplied with cable on March 10, 2010, but the Landlord still does not have internet.

Analysis

This Hearing was challenged by conflicting testimony from the Tenants and the Landlord on almost every issue.

Section 32(1) of the Act states:

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.

The Landlord agreed that the stove should be replaced. The Landlord testified that the previous tenants had a cockroach infestation. I find that the Landlord has not complied with Section 32(1) of the Act and I order him to do so. The Landlord is hereby ordered to provide the Tenants with a fully functioning oven and stove top by April 30, 2010. The Landlord is hereby ordered to provide fumigation of the Tenants' home for cockroaches by a professional pest control service as soon as possible.

With respect to the Tenants' application for compensation for damage or loss, based on the testimony of both parties, I find that the Tenants have established that they have been without use of a stove since January 1, 2010. I find that this loss happened solely because of the neglect of the Landlord in violation of Section 32(1) of the Act. I find that the Tenants took steps to mitigate or minimize their loss by giving the Landlord written notice of the faulty stove on January 19, 2010. Therefore, I award the Tenants the sum of \$200.00 for the devaluation of the tenancy since January 19, 2010. I further order that rent be reduced by \$3.50 per day from and including April 1, 2010 for this loss until the stove is replaced with a fully functioning stove.

Based on the testimony of both parties, I find that the Tenants have established that they have a cockroach infestation. I find that this occurred solely because of the neglect of the Landlord in violation of Section 32(1) of the Act. I find that the Tenants gave the Landlord written notice of the cockroach infestation on January 19, 2010. Therefore, I award the Tenants the sum of \$400.00 in compensation. I further order that rent be reduced by \$7.00 per day from and including April 1, 2010 until the Tenants' home has been professionally fumigated.

In a claim for damages, it is the Applicant's task to prove that damages exist. There was conflicting testimony with respect to the Tenants' claim for compensation for lack of cable. I note that the Tenants now have cable, and therefore I find there was some agreement with respect to providing the Tenants with cable. Based on the verbal testimony of both parties, it is not possible for me to determine what the agreement was. Nonetheless, I find that cable is now included in the Tenant's monthly rent payments.

The Tenants have not proven that the Landlord entered their home without notice or permission on January 28, 2010. The elastic band might have become dislodged. There were no witnesses that the Landlord entered the Tenants' home. I dismiss the Tenants' application for an order restricting or suspending the Landlord's right of access to the rental unit.

The Landlord is reminded of the provisions of Section 29(1) of the Act, which states:

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.

The Tenants have established a monetary claim in the amount of \$600.00. Pursuant to the provisions of Section 72 of the Act, the Tenants may deduct this amount from future rent due to the Landlord.

I note that there are several clauses in the tenancy agreement that are unenforceable, as they do not comply with the Act. These unenforceable clauses include:

- *Infraction of this clause, tenants can be vacated within 24 hours.*
- *Minimum tenancy of 13 months or forfeit deposit of ½ month.*
- *The sum of \$525.00 is hereby acknowledge to be held for as security deposit if I fail to give a full month's notice of my desire to vacate the premises, this deposit shall be forfeited to the Landlord as part of damage, also to apply to cost of cleaning if dirty, damage to suite if any when I vacate the premises.*

(reproduced as written)

Parties cannot contract outside the provisions of the Act.

Security deposits are held in trust for the tenant(s), to be applied in accordance with the provisions of Section 38 of the Act, a copy of which is attached to this Decision.

Conclusion

The Notice to End Tenancy issued February 1, 2010, is cancelled. The tenancy remains in full force and effect.

The Tenants may deduct the amount of \$600.00 from future rent due to the Landlord, in compensation for damage or loss.

The Landlord is hereby ordered to comply with Section 32 of the Act.

I hereby order that rent is reduced by \$3.50 per day, from and including April 1, 2010, until the Landlord complies with the Act and provides the Tenants with a fully functional stove.

I hereby order that rent is reduced by \$7.00 per day, from and including April 1, 2010, until the Landlord complies with the Act and has the Tenants' home professionally fumigated for cockroaches.

The Tenants' application for compensation for lack of cable is dismissed. I find that cable is included in the monthly rent, effective March, 2010. The Tenants' application to restrict or suspend the Landlord's right of access to the rental unit is dismissed.

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.

March 30, 2010

Date of Decision
