

DECISION

Dispute Codes CNL, MNDC,

Introduction

This was the hearing of an application by the tenant. The tenant requested a rent reduction and compensation for loss of services and quiet enjoyment; she also applied to cancel a 2 month Notice to End Tenancy for landlord's use. The hearing was conducted by conference call. The tenant participated and the named parties appeared on behalf of the landlord.

Background and Evidence

The tenant has applied for a monetary order in the amount of \$4,050.00. She has requested compensation for the occasional loss of use of the elevator in the apartment building. The tenant also claimed loss of enjoyment due to attacks by dogs kept by another occupant of the apartment building. The tenant has other concerns relating to security in the building and the parking garage. The landlord issued a two month Notice to End Tenancy dated February 19, 2010. The Notice requires the tenant to move out of the rental unit by April 30, 2010. The Notice was given on the basis that the landlord intends to renovate the rental unit in a manner that requires it to be vacant and the landlord has all the necessary permits and approvals required to carry out the work.

The landlord's representatives testified that the landlord gave the tenant and a two month Notice to End Tenancy because, as part of its ongoing renovation plans the landlord will perform plumbing and electrical work to the rental unit and several other units in the building. The landlord's representative testified that piping in the building is mostly the original piping. The piping is deteriorated and needs to be replaced. The landlord intends to open the walls in the rental unit as part of its renovations so as to replace piping. The landlord intends to remove and replace all the plumbing fixtures in

the unit at the same time as the piping is replaced. The proposed work includes the removal and replacement of bathroom flooring, the removal and replacement of the toilet, vanity and sink, removal of bathtub tiles and bathtub, installation of a new bathtub, new studs as required, HB boards around bathtub new ceramic tiles and the installation of a new sink and medicine cabinet. The kitchen is to be remodelled by the removal of the sink and countertops and linoleum and their replacement. The work also includes the sanding and refinishing of the hardwood floors in the rental unit.

The landlord testified that the work cannot be performed unless the rental unit is vacant.

The tenant submitted that the landlord is attempting to evict her because she has applied for dispute resolution in the past and the landlord is using the renovations as an excuse to evict her. The tenant questioned whether the rental unit needs to be vacant for the proposed work to be performed. The tenant also said that she neither wants nor need the proposed work to her unit and said that it is not necessary.

The tenant has requested compensation for what she said is harassment by the landlord and she requested payment of \$500.00 stated to be: "A penalty that will hopefully inspire the owner to fix the elevator when it breaks down."

The tenant requested compensation for the loss of elevator service since she was awarded compensation for loss of elevator service after a dispute resolution hearing in January, 2008. The tenant testified that the elevator was out of service for 24 hours on July 29, 2009 and for several days in November and December, 2009. The landlord submitted a report from the elevator service company wherein it was reported that the elevator was out of service for part of the day on November 17, 2009 and was intermittently out of service on November 20th, November 21st, November 22nd, November 23rd, December 1st and December 4th.

The tenant testified that she and her dogs have been repeatedly annoyed and attacked by two cocker spaniel dogs owned by another occupant of the apartment building. She

testified that the dogs are aggressive and bark at all hours. The tenant's dogs were attacked and injured by the cocker spaniels away from the rental property. The tenant testified that despite her complaints the landlord has refused to address the problem. The tenant requested compensation for loss of quiet enjoyment.

The landlord disputed the tenant's evidence regarding the disturbance caused by the cocker spaniels. According to the landlord there have been no other complaints about noise, even from occupants adjacent to the dogs.

The tenant raised concerns about building security after her car was vandalized in January. The tenant requested that the landlord install a surveillance camera and put a lock on the door leading to the underground parking garage.

Analysis and conclusion

The work that the landlord has planned for the rental unit is similar to the work planned to be performed at the same time to several other suites. According to the landlord's evidence it is part of an ongoing plan of improvements to the rental property.

The evidence presented has satisfied me that the landlord gave the Notice to End Tenancy in good faith and that the renovation and repair work to be undertaken by the landlord requires that the rental unit be vacant. I therefore deny the tenant's application and confirm the landlord's Notice to End Tenancy. The landlord requested that I issue an order for possession in the event that I upheld the Notice; accordingly I grant the landlord an order for possession effective April 30, 2010 after service on the tenant. This order may be registered in the Supreme Court and enforced as an order of that court.

With respect to the tenant's other claims, I find that the tenant has not shown, on a balance of probabilities that she is entitled to compensation for loss of quiet enjoyment

with respect to the neighbours dogs. I accept that the tenant has had confrontations with the cocker spaniels; the most serious incident occurred away from the rental property. The evidence of disturbances by barking is equivocal and I deny the tenant's claim for compensation for loss of quiet enjoyment on this ground.

I do not accept the tenant's contention that the landlord should install a security camera and lock on the door to the parking garage. I accept the landlord's evidence on this point. Further it is not appropriate to make this order given that the tenancy is ending.

With respect to the tenant's claim for loss of use of the elevator, I do accept her evidence that there were several days when the elevator was out of service and, given her health problems, this amounted to a significant hardship. I award the tenant compensation in the amount of \$200.00 for the loss of elevator use. The remainder of the tenant's claims are dismissed. Success on the application was divided and I award the tenant \$25.00 of the \$50.00 filing fee paid for her application for a total award of \$225.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: April 16, 2010.
