

DECISION

Dispute Codes OPC, CNC, CNR, MT, RP, MND, MNR, FF

Introduction

The hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for an order of possession and a monetary order. The tenants have filed two separate applications to cancel notices to end tenancy and for an order to have the landlord make repairs.

The hearing was conducted via teleconference and was attended by the landlord and his agent and both tenants.

At the outset of the hearing I questioned the tenants to determine if they had submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent. They testified that they had; however, there was no record on file of receiving this notice. We continued the hearing without a copy of the 10 Day Notice.

The landlord confirmed at the start of the hearing that part of their claim was for unpaid rent and had therefore been requesting a monetary order for \$2,100.00. The landlord noted the tenants had paid rent and amended their application to a total of \$1,000.00 for damages and cleaning.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent, damage to the residential property; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided whether the tenants are entitled to more time to apply to cancel a notice and to cancel a 1 Month Notice to End Tenancy for Cause; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to an order director the landlord to make repairs, pursuant to sections 46, 47, 66, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenants submitted in documentary evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on February 23, 2010 with an effective date of March 31, 2010 citing the tenant or a person permitted on the property by the tenant

has: significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk; and that the tenant has engaged in illegal activity that has or is likely to: damage the landlord's property adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and jeopardize a lawful right or interest of another occupant or the landlord.

The landlord has submitted the following documents into evidence:

- A summary of issues prepared by the landlord;
- A copy of the 1 Month Notice to End Tenancy for Cause (as noted above);
- A copy of the landlord's registered mail receipt and tracking sheet confirming the female tenant signed acknowledging receipt of the 1 Month Notice to End Tenancy for Cause on February 24, 2010;
- A copy of the tenancy agreement showing the original tenancy began in May 15, 2009 for a month to month tenancy for a monthly rent of \$1,100.00 due on the 1st of the month;
- Letters from several other tenants and witnesses regarding activities and behaviour of the tenants;
- A locksmith report indicating the work completed and the charges of \$45.00 per visit with three visits completed; and
- A receipt for a service call to check the condition of a hot water tank, dated April 9, 2010 in the amount of \$115.50.

The landlord, through testimony, confirmed that the male tenant had paid a security deposit of \$275.00 and the female tenant had paid a security deposit of \$225.00.

The female tenant testified that they had not received the 1 Month Notice to End Tenancy until March 1, 2010 and so had submitted their application on time. She further testified that she had needed more time because the male tenant was seriously ill and that she has a young baby. The application was received by the Residential Tenancy Branch on March 10, 2010 and was signed by the male tenant.

The tenants testified that there is a problem with the hot water tank that only allowed of the tenants per day to shower before running out of water. The tenants state the landlord had arranged to have one plumbing contractor attend to assess the problem and then the landlord chose to send a second contractor.

The tenant then said there was mold in the kitchen counters and cabinetry and taps were leaking. The landlord stated that an inspection had been completed on January 26, 2010 and there were no problems identified at that time. The tenants have not submitted any documentary evidence to support this claim.

The landlord testified that they had called the original plumbing contractor based on the tenant's assertion there was a problem with the hot water tank. The first contractor

indicated the tank required replacement. The landlord stated that since the tank was still under warranty they contacted the original installer for an assessment who indicated there is no problem with the tank.

The landlord testified that they had several tenants complain that these tenants had altered the closing mechanism of the exterior door allowing anyone access from the street to the building.

The landlord also provided testimony that the damage to the common areas of the residential property is a result of bicycle markings on walls and doors resulting from visitors going to the dispute address. The tenant acknowledged that the person going to their unit was a helper for the male tenant. The landlord has provided no evidence of the costs associated with repairing any damage.

Analysis

Section 66 of the *Act* allows me to consider extending the time limit established by the *Act* in *exceptional* circumstances. The tenants have failed to submit any evidence or testimony of exceptional circumstances preventing them from applying within the 10 day limit required under Section 47 to dispute a 1 Month Notice to End Tenancy for Cause.

As a result, I find the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must vacate the rental unit.

As the tenant has failed to provide any evidence of repairs that may be required and since the landlord has provided documentation from a plumbing contractor that there is no problem with the hot water tank, I dismiss the tenant's application for an order to have the landlord make repairs.

I am not satisfied, based on the testimony provided that landlord has proven that these particular tenants altered the closing mechanism on the exterior door and as such I dismiss this portion of their claim.

In relation to the landlord's claim against the tenants for the need to call in the plumbing contractor, I find that it is the landlord's responsibility to respond to complaints of malfunction services and facilities and that it is a cost of doing business to deal with such issues. I therefore dismiss this portion of the landlord's claim.

Finally, I am convinced the tenants allowed a guest to cause damage to the common areas and despite the landlords lack of submission of estimates for repairs, but based on their submission of photographs of the damage I find the landlord is entitled to compensation for repairs in the amount of \$300.00.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$350.00** comprised of \$300.00 compensation owed and the \$50.00 fee paid by the landlord for this application.

Pursuant to Section 72(2)(b), I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$500.00 in satisfaction of this claim.

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: April 26, 2010.

Dispute Resolution Officer