

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP, PSF, RR

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To Cancel a Notice to End Tenancy given for Cause;
2. A monetary Order for compensation for damage or loss;
3. An Order that the landlord comply with the Act, Regulation or Tenancy Agreement;
4. An Order that the landlord make repairs;
5. An Order that the landlord make emergency repairs;
6. An Order that the landlord provide services and/or facilities that have not been provided; and
7. An Order that the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Preliminary Matters

MG of the Elizabeth Fry Society, advocate for the tenant, requested an adjournment of the hearing stating that the tenant had not been properly served with the landlord's evidence and there had not been sufficient time to review the evidence. The tenant confirmed this testifying that she was not personally served with the landlord's evidence as required by the Act. The tenant testified that instead of serving her directly, the landlord served her advocate, SC of the Elizabeth Fry Society. SC then became unavailable to assist the tenant at the hearing and the matter was assigned to MG.

In evidence the tenant submitted a letter from her first Elizabeth Fry Advocate, SC. This letter is dated May 20, 2010 and it is addressed to the Residential Tenancy Branch.

The tenant testified that this letter is a “written submission” prepared on her behalf by SC.

The landlord testified that they served their evidence on the tenant by way of serving her advocate as requested by the tenant.

Based on the evidence supplied by the tenant, that is the written submission prepared by SC dated May 20, 2010, it is clear that the tenant is being represented by the Elizabeth Fry Society and, as the tenant’s advocates, they may be served with evidence with respect to this matter and I find it reasonable and probably that if the landlords served the tenant through her advocates they must, as they say, have been instructed to do so.

The landlords are in attendance and ready to proceed. As this hearing is being held June 2, 2010, I find that this is sufficient time for the tenant and her advocates to review the landlord’s evidence. If it were not, the Rules of Procedure set out the method to be used to request an adjournment and these Rules were not followed. In any event, the request for adjournment is denied.

Background and Evidence

This tenancy first began on October 1, 2006. The tenant paid a security deposit of \$725.00 on August 20, 2009. Initially the parties entered into a 2 year fixed term ending September 30, 2008 following which the parties entered into another one year fixed term tenancy ending September 30, 2009. At the end of this tenancy the tenancy was to continue on as a month-to-month tenancy.

In November of 2009, while under a month-to-month tenancy, the tenant says the landlords approached her asking to sign a new tenancy agreement setting a fixed term of 6 months after which time the tenancy would end and the tenant would have to vacate the premises. The tenant says she felt coerced by the landlords into signing the

new tenancy agreement. The tenant says she has a head injury and does not always understand what she is signing. The tenant testified that the landlords threatened to raise her rent if she would not sign. The tenant says the landlords also reassured her that they would enter into another fixed term after the 6 month term expired. However, on February 23, 2010 the landlord sent the tenant a letter stating that they would not be renewing the tenancy agreement at the end of the fixed term on May 31, 2010 and they expected her to vacate the premises in accordance with the tenancy agreement.

The tenant testified that during the course of the tenancy she made repeated requests for repairs to the rental unit which were not done. The tenant says she requested repairs to the kitchen cabinet doors and she requested that the garage door opener be repaired. The tenant testified that she was unable to use the garage while the opener was not functioning. Advocate for the tenant submitted this use of the garage was very important to the tenant because she is disabled and she uses a scooter that she parks in the garage. The tenant says she requested further repairs to the furnace, to a window, to plumbing in the kitchen sink and to drywall in the basement.

In her submissions the tenant's advocate states that the tenant initially rented the property with her son who was not yet the age of majority and two other gentlemen. The tenant submits that she required roommates because she is on income assistance and could not afford the rent which was then \$1,475.00 on her own. Over the course of the tenancy one of the tenant's roommates passed away and the other moved out. The tenant submits that she had a few other roommates who vacated because they felt that the living conditions in the home were unsuitable. The tenant submits that she cannot pay her rent on her own because she is on social assistance that the landlord is well aware of this and knows that this is why she must rent rooms in the rental unit. The tenant says right now her son, who is now an adult, assists with paying her rent as do the members of her church.

In her Application for Dispute Resolution the tenant is requesting a monetary order in the sum of \$10,337.50. In the written submissions the tenant's advocate states that the tenant is seeking \$10,337.00. The tenant's advocate goes on to state:

From my previous discussions with the tenant about what she believes she is entitled to I am unable to get to this number. After reviewing her documents I have come up with the following:

Loss of revenue from November 2009 (after the landlord was notified a second time of the repairs needing to be completed) to present \$10,500 (4 bedrooms rented at \$375 each)

Loss of use of garage \$250 (5 months without a garage door remote at \$50.00 per month). Tenant has disability and requires the door opener to be able to get her scooter in and out of the garage.

Loss of cupboard doors \$125 (5 months without cupboard doors at \$25.00 per month).

Total Request \$10,875.00

The landlords submit that they have not served the tenant with a Notice to End Tenancy for Cause. The landlords testified that under the Residential Tenancy Act there is no requirement to serve a Notice to End Tenancy where the parties agree that a tenancy agreement ends and the tenant must vacate at the end of a fixed term. The landlords submitted into evidence the tenancy agreement. That agreement is between the landlord KK and the tenant KC. The agreement shows that the tenancy commences December 1, 2009 for a fixed term of 6 months ending May 31, 2010. The parties also selected option "ii" that is that at the end of the fixed term "the tenancy ends and the tenant must move out of the residential unit". Both parties have initialled this option. The landlord submits that while they are aware they did not have to serve a Notice to End Tenancy they did write to the tenant on February 23, 2010 confirming that they did not intend to enter into a new tenancy agreement with her after May 31, 2010. The landlords say they sent that letter by registered mail and it was returned to them on March 17, 2010. They then hand delivered the letter to the tenant's mailbox on March 18, 2010. The landlords say they provided this information to the tenant so she could have 3 months to make arrangements to find new accommodation. A few weeks later

the landlords say they were served with the tenant's Application for Dispute Resolution filed April 19, 2010 which is the subject of this hearing.

With respect to the final 6 month term tenancy agreement the landlords testified that they did not coerce the tenant into signing this new tenancy agreement. The landlord testified that at the end of the second fixed term tenancy the tenant asked that the tenancy continue on a month-to-month tenancy without a fixed term. The landlord says the tenant advised them that her son was likely moving out and that her father was terminally ill and she did not wish to be committed to a fixed term. The landlords testified that they agreed to this as a temporary arrangement due to the tenant's circumstances. The landlord says the tenant was having difficulty paying her rent and this would allow her to leave if she needed to do on just 30 days notice. A few months into the month-to-month tenancy it was clear the tenant could not meet her commitments and that the tenancy should end. The landlords testified that they did not wish to evict the tenant but it was becoming a difficult tenancy and the tenant was having difficulty paying her rent. The landlords testified that they offered the tenant a 6 month fixed term to give her more time to rearrange her affairs to allow her to pay her rent or, if that were not possible, to provide 6 months within which to allow her to find new accommodation.

The landlords testified that 3 months into the 6 month fixed term it was clear the tenant was having trouble managing her rent. The landlords testified that their own health is not good and the tenancy was becoming a strain on them but they hoped to end the tenancy amicably. So, on February 23, 2010 they wrote to the tenant to advise that they would not consider entering into a new tenancy agreement with her after May 31, 2010.

With respect to the tenant's claim for loss of rental income in the sum of \$10,500.00, the landlords say that the tenant has never had their written permission, as required by the Act, to sub-let the rental unit and she should not have been doing so.

With respect to the tenants claim for \$250.00 for loss of use of the garage the landlords say it is true that the garage door remote stopped working. The landlords say that they did attempt to have the remote repaired but it turned out that the problem was not the remote but the garage door chain. In any event the tenant would not have been able to park her scooter inside the garage as it was full of other goods. The landlord says the tenant was also away for part of the time that the remote was in need of repair and the landlord says the matter was corrected within 3 months not the 5 months the tenant claimed.

With respect to the tenants claim for \$125.00 for the loss of kitchen cupboard doors the landlord says it is true that he removed 2 cupboard doors to have them repaired. One was cracked the other had a hairline crack. The landlord says these repairs took time but only 3 months, not the 5 months the tenant claims.

Analysis and Findings

Cancel a Notice to End Tenancy given for Cause

With respect to this application the evidence shows that no such notice has been served. A review of the Tenancy Agreement submitted in evidence shows that this tenancy had a fixed term ending May 31, 2010 at which time the tenancy is to end and the tenant is to vacate the rental unit. The tenant agrees that she signed this standard form of tenancy agreement. The agreement is a standard form of Tenancy Agreement and I find insufficient evidence to support the tenant's claim that the landlord's coerced her into signing it by threatening her with a rent increase. Even if the landlord did make such a threat this does not qualify as duress under the law. If such a threat was made there are laws governing rental increases and it was open to the tenant to refuse to sign the Tenancy Agreement and take the matter up as necessary by way of an Application for Dispute Resolution being filed with the Residential Tenancy Branch as she has done now. With respect to the tenant's claim that she is disabled by a head injury and is not aware of what she signs, the tenant has provided insufficient evidence to prove that she has such a medical condition. In any event, I find that the tenant has shown herself to be capable of understanding the previous tenancy agreements she signed and, if she

did not understand, her abilities in obtaining support are demonstrated in her ability to make this current Application and seek out the support of the Elizabeth Fry Society to do so. The landlords are free to make an application to seek an Order of Possession.

Monetary Order for Compensation for Damage or Loss

With respect to the tenant's claim for a monetary order for loss of rental income of \$10,500.00, Section 34 of the *Residential Tenancy Act* addresses assignments and subletting. It says, in part:

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

The evidence shows that the tenant is the only person responsible for paying the rent under the Tenancy Agreement. The tenant has not been able to show that she has the landlord's consent in writing to sublet the rental unit and the landlord has testified that their permission has not been given. I therefore find that the tenant did not have permission to sub-let the rental unit and the landlords should therefore not be held responsible for any losses the tenant may have suffered as a result of her inability to sub-let the rental unit. This claim is therefore dismissed.

With respect to the tenant's claim for a monetary order for the lack of cupboard doors and the loss of the garage door remote, in this I prefer the evidence of the landlord that it took 3 months, not 5, to replace and/or repair these items. With respect to the loss of the cupboard doors I find that this loss did not render the kitchen cupboard useless and I therefore dismiss the tenants claim for compensation therefor. With respect to the tenant's claim for the loss of use of the garage due to the inoperable garage door opener I will allow the tenant \$25.00 per month for 3 months for a total of \$75.00.

With respect to the tenant's claims for:

- An Order that the landlord comply with the Act, Regulation or Tenancy Agreement;
- An Order that the landlord make repairs;
- An Order that the landlord make emergency repairs;
- An Order that the landlord provide services and/or facilities that have not been provided; and
- An Order that the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided.

As this tenancy ended on May 31, 2010 I will not order the landlord to comply, make repairs, provided services or facilities or allow for a rental reduction.

Conclusion

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.