

## **DECISION**

Dispute Codes        CNC, MNDC, OLC, RPP, LRE, OPT, LAT, RR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy, for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, for an Order for the landlord to comply with the *Act*, for an Order for the landlord to return the tenants personal property, to suspend or set conditions on the landlords right to enter the rental unit, for the tenant to obtain an Order of Possession for the rental unit, to authorize the tenant to change the locks to the rental unit and to allow the tenant to reduce her rent for repairs, services or facilities agreed upon but not provided.

The tenant served the landlords in person on May 06, 2010 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both landlords and their son, acting as their agent, appeared along with the tenant. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

- Is the tenant entitled to an Order for the landlord to return her personal property?
- Is the tenant entitled to an Order to suspend or set conditions on the landlord's right to enter the rental unit?
- Is the tenant entitled to an Order of Possession?
- Is the tenant entitled to change the locks on the rental unit?
- Is the tenant entitled to reduce her rent for services agreed upon but not provided?

### Background and Evidence

This month to month tenancy started on May 01, 2002. At that time the property was owned by a different landlord who sold the property to these landlords on October 01, 2005. The tenant pays a monthly rent of \$550.00 which is due on the first of each month. The tenant paid a security deposit of \$300.00 on May 12, 2002.

At the outset of the hearing the landlords state that they wish to seek an Order of Possession in the event the tenants' application to cancel the One Month Notice is not successful.

The landlords testify that the tenant was served a One Month Notice to End Tenancy on May 03, 2010. The effective date of this notice was June 03, 2010. The reason given on this notice is that the tenant is repeatedly late paying rent. The landlords claim the tenant gave them a rent cheque on October 15, 2009 and this cheque was returned as there were insufficient funds available. The tenant then gave the landlord another cheque for this months' rent which cleared at the bank.

The landlords testify the tenant was late paying rent again in January, 2010. She gave them a cheque on January 08, 2010 which was returned as there were insufficient funds available. The tenant was notified by the landlord and did not write another cheque for her rent until a few days later. The tenant did not pay her rent in time for February and

gave the landlords a cheque on February 05, 2010. The landlords testify that the tenant did not pay her rent on time for May, 2010 and gave them a cheque on May 02, 2010.

The landlords claim the tenant is repeatedly late with rent sometimes her rent is up to 10 days late each month. Each time the tenant dates the cheque for the first of the month but does not give it to the landlords on this date. The landlord has provided some evidence of late rent payments and returned cheques for October, 2009 and for January and February, 2010.

The tenant testifies that the rent has only been late on a few occasions as stated by the landlord on October, 2009, January and February, 2010. The tenant testifies that she went to pay her rent on May 01, 2010 however the landlord was not at home and she was reluctant to leave it with the landlord's son.

The tenant testifies that from the outset of her tenancy in 2002 she always had cable service. However, on April 14, 2010 the landlord disconnected this service. The tenant states she had to pay \$50.00 to the cable company to reinstate the service and has to pay \$19.95 over the next six months for cable.

The landlords testify that the old landlord had not given them a copy of the tenancy agreement and they were unaware that cable was included in the tenants rent. The cable company discovered that the cable was operating on a split line and the company disconnected the service. The landlords testifies that the tenant has already deducted \$72.07 from her May rent check for this without permission.

The tenant testifies that the landlord has built another suite attached to her unit without the required permits. This building has covered the tenants' two living room windows and because of this she has lost her natural light in the living room and her air circulation. She states she now only has a small window in the kitchen end of the room. The tenant also claims that due to this building she has also lost the use of her patio. The tenant claims the new suite only has a thin plywood wall and dry wall and this has

affected her privacy because both sets of tenants can now hear each other through the wall. The tenant also claims she had a security system fitted to her unit since the start of her tenancy and the landlord has now disconnected this system when the other suite was built. The tenant seeks a rent reduction for the loss of these items since January 02, 2006 to the sum of \$2,700.00.

The landlords testify that the tenant still has a window in her unit and admits that they did cover up two other windows. The landlord's state that the patio and security alarm is not included in her tenancy agreement. The landlords claim that they did insulate the wall between the two units when it was built.

The tenant testifies that the landlord has removed her garden chairs and used them on their own patio and some of the tenants planters in the garden have gone missing because the landlords have used them in their own garden. The tenant also claims the landlords have broken the wheels on her garbage bin, damaged her bike and a table stored in the landlords garage. The tenant claims the landlords mentioned that they would fit a screen door to her unit to allow the air to circulate however they have failed to do this.

The landlord denies the tenants claims; they state the tenants chairs are in the garden now along with her planters. The landlords also state that they did not break the wheels on her garbage bin or damage her bike or a table. The landlord's state they never agreed to fit a screen door to the tenants' door.

The tenant testifies that the landlords have entered her suite illegally. She claims they entered her suite and repaired a door handle without her permission

The landlords dispute the tenants' allegation and state they have never entered her suite without her permission and have not made any repairs to her door handle.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants' application to cancel the notice to end tenancy, I find the tenant has been late with her rent on at least three occasions in the last year on October, 2009, January and February 2010. The tenant argues that she went to pay her rent for May on the first of the month but did not want to leave her cheque with the landlords' son. However, the landlords' wife claims she was at home at the time and the tenant did not ask her son if she was home to leave the cheque with her instead. Consequently, I find the tenant was also late paying rent for May, 2010 also.

The landlord served the tenant with a One Month Notice to End Tenancy for being repeatedly late paying her rent; consequently from the evidence provided I find the One Month Notice is upheld and the landlord are entitled to an Order of Possession pursuant to section 55(1)(a) of the *Act*.

With regard to the tenants claim for compensation for the loss of her cable service on April 14, 2010. Section 27(1)(b) of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is a material term of the tenancy agreement. I find the cable service was terminated on April 14, 2010. I find the tenant has already deducted \$72.07 from her rent for May, 2010. The tenant states she paid a \$50.00 connection fee and must pay a monthly fee of \$19.95. Therefore I find the tenant is entitled to compensation for June, 2010 for the loss of this cable service of **\$17.83**.

The tenant seeks compensation of \$2,700.00 for the loss of her two living room windows, use of a patio, her security system, and loss of privacy and reduced air circulation in her unit since January 02, 2006. The landlord agrees that they did cover the tenants' two windows when they built the new suite however they deny they did not insulate the suite in a manner to protect both tenants privacy and quiet enjoyment and state the tenancy agreement does not include a security system or use of a patio. When a tenants evidence is contradicted by the landlords the burden of proof falls on the

tenant to provide further corroborating evidence to support her claim. I find the tenant has not provided sufficient evidence to show the landlords did not insulate the party wall between the suites or that the security system and patio was part of the tenancy agreement.

I find the tenant did not bring her grievances to the attention of the landlord or file an application when she first suffered the loss of her windows and air circulation and has not shown how she mitigated her loss in this matter since 2006. Therefore it is my decision that the tenant is entitled to compensation of \$50.00 per month for 12 months to a total sum of **\$600.00**.

With regards to the tenants claim for the landlord to return the tenants personal belongings, I find the tenant has provided no evidence to support her claim that the landlord has taken any or her garden furniture or planters and this section of the tenants application is dismissed.

With regards to the tenants claim that the landlords damaged her bike, a table and garbage bin, I find the tenant has provided no evidence to support this section of her claim and it is dismissed without leave to reapply.

The tenant seeks to reduce her rent for services or facilities agreed upon but not provided. I find as the tenancy will end and the tenant has been compensated for the loss of her cable, windows and air circulation in the form of a Monetary Order then no further orders will be made with regards to this section of the tenants claim. A Monetary Order has been issued to the tenant for the amount of **\$617.83**.

The remainder of the tenants claim is dismissed as an Order of Possession has been issued and the tenancy will end on June 30, 2010.

### Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$617.83**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on **June 30, 2010**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 24, 2010.

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Dispute Resolution Officer