

DECISION

Dispute Codes

Landlord: OPL, FF

Tenant: CNL, MNDC, ERP, RP

Introduction

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for an Order of Possession and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling the 2 Month Notice to End Tenancy for Landlord's Use, for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order that the landlord make repairs to the unit, and for an order that the landlord make emergency repairs for health or safety reasons.

The tenant also applied for an order allowing more time to make the application to cancel the notice to end tenancy. Her application was allowed, and the hearing included evidence to support her application.

The male landlord and the tenant both gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

The landlord applied at the outset of the hearing to amend the style of cause to correct the spelling of his surname, which is ordered, and the amended style of cause appears on the frontage page of this Decision.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make emergency repairs to the unit for health or safety reasons?

Is the tenant entitled to an order that the landlord make repairs to the unit?

Background and Evidence

This month-to-month tenancy began on May 1, 2006. Rent in the amount of \$750.00 is payable in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit from the tenant in the amount of \$375.00.

The landlord testified that he had served upon the tenant a 2 Month Notice to End Tenancy for Landlord's Use of Property on April 25, 2010. He stated that his mother will be moving into the unit. He did not, however, offer the tenant one month of free rent as required under the *Act*.

The tenant feels that the landlord issued the notice after she had complained about the tenant in the unit above hers. The two tenants had had several disputes since 2007 which also required police attendance on 4 occasions. The tenant stated that when she complained to the landlord about noise from the other unit and numerous other complaints, the landlord failed to continue to answer her phone calls. She also testified that she had been assaulted by the other tenant. The tenant is claiming \$250.00 from the landlord for his failure to provide quiet enjoyment, as well as \$300.00 for the landlord's failure to assist her with her disputes with the other tenant, and \$500.00 for the upstairs tenant throwing water on her children while playing outside. The tenant is also claiming \$1,000.00 for pain and suffering. She stated that the landlord had told her she could cut the power to the unit upstairs when she had complained about loud music when no one was home in that unit, and then failed to support her when the police were called. The tenant further claims \$500.00, or \$250.00 if the landlord provides her with an apology for his failure to support her.

The tenant is also claiming \$500.00 from the landlords for breach of quiet enjoyment, which she has described as being a family disturbance and harassment by the other

tenant. She also claims 10% of April's rent for her inability to use her entire yard due to the upstairs tenant chaining her gate closed, and another 5% for May and future months until the problem is rectified.

The landlord replied that he had warned the tenant upstairs on several occasions about the issues, and did so in writing and then advised this tenant that he had done so, but he was not present when the alleged assault took place. He testified that he has tried talking to both tenants about resolving their disputes.

The tenancy agreement, a copy of which was provided in advance of the hearing, states that the tenant is responsible for 50% of the utilities. The tenant testified that she had been paying for electricity but the tenant upstairs, who pays the other 50%, keeps the outside light on all the time. As a result, this tenant is claiming \$75.00 for the entire tenancy because the other tenant is causing the bill to be higher than it needs to be. The landlord testified that it is an energy saving light, not a motion light. The tenant also feels that her share should be 40% because it is so in other similar tenancies. The tenant also testified that she has not been provided with copies of the utility bills.

The tenant is also claiming \$240.00, being 8 months for 3 winters at \$10.00 per month for loss of heat that she has attributed to a gap in the window. She testified that she fixed the gap herself, and is also claiming \$9.99 for the silicone that she purchased and \$20.00 for her own labor. She also provided copies of written requests for these repairs commencing in December, 2008.

Analysis

Firstly, dealing with the notice to end tenancy, I find that the tenant has failed to establish that the landlord will not fulfill his good faith intentions as stated in the notice. For that reason, the notice to end tenancy cannot be cancelled.

Having found that the notice to end tenancy should not be cancelled, I find that the tenant's application for an order that the landlords make repairs to the unit, and the application for emergency repairs for health or safety reasons are not justified in the circumstances.

The tenant's application to reduce the utilities to 40% as opposed to 50% is not justified because it is a term of the tenancy agreement.

I find that the tenant's application for a monetary order is partially justified. The *Residential Tenancy Act* states that:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Further, the tenant provided proof that the landlords had been advised of the heat loss due to the gaps in the window, but failed to correct the situation. The tenant did correct the issue at her own expense. I find that the tenant is entitled to \$9.99 for the silicone that she purchased, and I find that her claim for \$20.00 to do the work herself is justified. However, I find that the claim in the amount of \$240.00 for 24 months is excessive. Although the tenant may keep her heat on for 8 months of the year, I cannot agree that winter in a city on the west coast lasts for 8 months or that \$10.00 per month for 8 months a year has been established, and I award 4 months per year at \$10.00 per month in favour of the tenant for a total of \$120.00.

The tenant's claim in the amount of \$75.00 for the entire tenancy because the other tenant is causing the bill to be higher than it needs to be is not justified. I have no evidence before me that the difference in the bill would amount to \$75.00.

With respect to the remaining claims by the tenant:

- \$250.00 from the landlord for his failure to provide quiet enjoyment;
- \$300.00 for the landlord's failure to assist her with her disputes with the other tenant;

- \$500.00 for the upstairs tenant throwing water on her children while playing outside;
- \$1,000.00 for pain and suffering;
- \$500.00, or \$250.00 if the landlord provides her with an apology for his failure to support her when the police attended;
- \$500.00 from the landlords for breach of quiet enjoyment;

I find are all related to aggravated damages, which can be described as damages for mental distress arising from aggravating circumstances connected to a breach of contract, and compensatory damages for mental distress which arises out of the contractual breach itself. These types of damages must be determined according to what was in the reasonable contemplation of the parties at the time the contract was entered into. The question of the breach of the tenancy agreement is contained in the agreement itself, which states at paragraph 5 in the addendum, "That the Tenant will not do anything during the term which may grow to the annoyance, nuisance, grievance or damage of or to the Landlord or the occupiers of adjoining premises." I find that paragraph 5 of the addendum also applies to other tenants in the same building, and the tenant is entitled to damages. The landlord testified that he has spoken to both tenants about resolving their disputes, and admitted in a written caution to the other tenant in October, 2009 that he was also disturbed by her noise. No further written caution was issued to that tenant, and the landlord has therefore failed to provide this tenant with the right to quiet enjoyment, which is in breach of the tenancy agreement.

Conclusion

For the reasons stated above, the tenant's application to cancel the notice to end tenancy is hereby dismissed, and I grant the landlords an Order of Possession. The order must be served on the tenant. If the tenant fails to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant's application for an order that the landlords make repairs to the unit, site or property is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlords make emergency repairs for health or safety reasons is hereby dismissed without leave to reapply.

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby awarded at \$500.00 for general damages and \$149.99 for heat loss and silicone. The tenant is also entitled to the equivalent of one month's rent in the amount of \$750.00 from the landlords, for a total of 1,399.99. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

Since both parties have been partly successful with their claims, I decline to award the filing fee in favour of either party.

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 28, 2010.

Dispute Resolution Officer