

DECISION

Dispute Codes CNC, OLC, RP, PSF, MN, RR

Introduction

This hearing dealt with a claim by the tenants for an order setting aside a notice to end tenancy for cause, an order that the landlord comply with the Act, an order that the landlord make repairs and provide services, which claims were made under the tenants' original application for dispute resolution and further claims for a monetary order and an order permitting them to reduce rent which were made in an amendment dated June 9, 2010. The tenants testified that they served the landlord with their application for dispute resolution and notice of hearing by registered mail and further served the June 9 amendment on the landlord. I found that the landlord had been properly served with notice of the claim and of the hearing and the hearing proceeded in the landlord's absence.

At the outset of the hearing the tenants advised that they wished to withdraw all of their claims except for the claim for an order setting aside the notice to end tenancy, the monetary order and the order permitting them to reduce their rent.

Issues to be Decided

Should the notice to end tenancy be set aside?

Are the tenants entitled to a monetary order as claimed?

Should the tenants be permitted to reduce their rent?

Background and Evidence

The tenants' undisputed testimony is as follows. The tenancy began on August 1, 2009. Although a fixed-term tenancy agreement was not signed, the parties agreed that the

tenants wanted to live in the rental unit for 2-5 years. The tenants and the landlord discussed the condition of the rental unit and agreed that the flooring of the rental unit needed to be replaced and that the bathroom of the unit required extensive renovations. The tenants wanted to install a fence as they have a small child and the unit is located alongside a busy road. The tenants also wanted a back door on the unit so their child would not have to exit the house out of the front door which faced the road. The parties agreed that while the market value of the house was approximately \$1,000.00 per month, the tenants would pay just \$925.00 per month as the flooring and bathroom required repair.

The parties agreed that the tenants would install a fence and a back door. The landlord was to be responsible for the cost supplies to install the door and the tenants would donate their labour. The landlord was to provide the supplies for the fence and the tenants provide free of charge the labour for constructing the fence. The tenants agreed to do this at their own expense because they expected that they would be living in the rental unit for 2-5 years. The parties agreed that the tenants would install new flooring for which the landlord would pay for materials. The parties further agreed that the tenants would completely renovate the bathroom for which the landlord would provide supplies and the tenants be compensated at a rate of \$20.00 per hour.

Prior to the commencement of the tenancy, the tenants constructed a fence in an effort that required 40 hours of labour. The landlord paid for all of the materials pursuant to their agreement. The tenants installed the back door and spent \$60.00 for the rental of equipment for which they were not reimbursed and accrued \$440.00 for materials and labour for which they were only compensated \$100.00.

The landlord had initially intended to install used carpeting, but the tenants asked that linoleum be installed instead as it would cost approximately \$400.00. The tenants offered to perform labour free of charge if the landlord agreed to install linoleum rather than used carpeting. The landlord agreed and the linoleum was installed prior to the commencement of the tenancy. The tenants had to install a threshold after installing the laminate as the removal of the carpeting left a significant gap between the floor and

the door. It took the tenants approximately 4 hours to size the door and install the threshold.

In October 2009 the landlord asked the tenants to insulate the attic with the understanding that the landlord would pay for materials and would pay the tenants \$20.00 per hour for their labour. The tenants paid \$100.88 for materials and hired a relative, J.D., who operated an insulation company to perform part of the labour. The tenants spent 15 hours of their own labour on the project. The landlord reacted negatively to the \$636.88 invoiced by the tenants and after several heated discussions, the tenants accepted just \$336.88 in compensation for the job.

The tenants were supposed to renovate the bathroom, but after the altercations related to the attic, the tenants determined that they would not proceed with the renovation as they were not confident they would be paid pursuant to the terms of their verbal agreement. The tenants asked the landlord to perform repairs but the request was denied. The tenants replaced caulking at their own expense but have continued to live with broken tiles, black mould, rotten cupboards, a defective floor and leaky plumbing.

The tenants seek to recover \$800.00 for labour installing the fence, \$400.00 for the materials and labour spent installing the back door, \$480.00 for labour installing flooring and the threshold, \$300.00 for their labour insulating the attic, \$1,840.00 for having to live with an unsafe bathroom (estimated at 20% of the rent) and \$1,000.00 in anticipated moving expenses.

The tenants base their claim on the fact that they performed labour with the understanding that they would be permitted to remain in the unit for 2-5 years. Since the relationship with the landlord has broken down, they are anticipating that they will move in the near future and claim that they would not have offered to perform the repairs if they had known that their tenancy would not extend the length of time they had originally anticipated.

Analysis

The landlord bears the burden of proving that there are grounds to end the tenancy. As the landlord did not participate in the hearing, the evidence submitted by the landlord was not considered and I find that the landlord has not met the burden of proof. I therefore order that the notice to end tenancy dated April 27 be set aside and of no force or effect. As a result, the tenancy will continue.

Although the tenants anticipate that they will be leaving the rental unit, as of the date of the hearing they had not yet vacated the unit. As it is impossible to determine how long they will be remaining in the unit and enjoying the use of the back door, fence and floor. I find that their application is premature and dismiss with leave to reapply the claims for compensation for the labour involved with building the fence and installing the door and floor, including the threshold. The tenants' claim for the cost of moving is also dismissed with leave to reapply as they have not yet incurred that cost.

The tenants acknowledged that they forgave the landlord \$300.00 owed to them for labour involved with insulating the attic in an effort to "make them feel comfortable about the amount charged." It is not open to the tenants to now claim what they told the landlord they would not charge. The claim is dismissed.

At the outset of the tenancy the parties agreed that the market value of the rental unit was worth approximately \$1,000.00 but because of the condition of the unit, the rent should be reduced by \$75.00. The back door and fence were installed at the request of and for the benefit of the tenants and I find that those items cannot have been taken into account for the reduction of the rent. The linoleum was installed prior to the time the tenants moved into the unit and I find that the reduced rent could not have taken that into account either. I find that the \$75.00 reduction in rent was designed to compensate the tenants for having a deficient bathroom during the tenancy. While generally it is the landlord's responsibility to repair and maintain, in this case the parties agreed that the tenants would be compensated for deficiencies. The tenants withdrew their claim for the landlord to perform repairs and I find that as long as the tenants continue to enjoy a reduced rent, they are not entitled to compensation for loss of enjoyment of the bathroom. When the tenants begin paying \$1,000.00 per month in rent and stop

accepting the reduction in rent, they are free to file a claim for the landlord to perform repairs. Alternatively, the parties may wish to explore whether the tenants should pursue the original agreement to repair the bathroom with the landlord paying for materials and paying \$20.00 per hour for labour costs. The claim for compensation for loss of enjoyment of the bathroom is dismissed with leave to reapply.

I also dismiss the tenants' claim for permission to reduce their rent until repairs are completed as the tenants are already enjoying a rent reduction.

Conclusion

The notice to end tenancy is set aside. The monetary claims are dismissed, in some cases with leave to reapply.

Dated: June 24, 2010
