

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make emergency repairs and repairs to the unit pursuant to section 33;

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord testified that she served the tenant with the One Month Notice to End Tenancy for Cause by leaving it under the tenant's door on July 1, 2010. Although the tenant's advocate noted that this is not an approved method of service under the *Act*, the tenant gave sworn evidence that she received this notice at 10:00 p.m. on July 1, 2010. The tenant testified that she handed the landlord her application for dispute resolution package on July 6, 2010. I am satisfied by the sworn testimony that the parties have been served with these documents and with their respective evidence packages.

At the hearing, the landlord requested an Order of Possession if the tenant's application for cancellation of the Notice to End Tenancy were dismissed.

At the hearing, the tenant and her advocate asked to increase the amount of the tenant's request for a monetary order from \$400.00 in the initial application to \$1,047.95. Although the tenant included this in one of her evidence packages, she did not amend her original application, nor did she provide notice to the landlord that she

would be seeking a significantly increased monetary order. I advised the parties that I would only be considering the items and amounts identified in the tenant's original application for dispute resolution served to the landlord.

Issues(s) to be Decided

Is the tenant entitled to cancellation of the landlord's notice to end tenancy? Is the tenant entitled to a monetary order? Should an order be issued to the landlord to conduct repairs or emergency repairs or to comply with a provision of the *Act*?

Background and Evidence

This month-to-month tenancy commenced on July 29, 2009. The tenant is paying \$750.00 in monthly rent, payable on the first of each month. The landlord testified that she continues to hold the tenant's \$375.00 security deposit, paid on July 9, 2009.

The landlord testified that she issued the One Month Notice to End Tenancy for Cause because of the behaviour of the tenant and her friends. She said that the tenant and her friends make her feel stress and that she lives in fear after receiving the tenant's application. She testified that she does not have peaceful enjoyment of her property because she lives upstairs from the tenant.

The landlord testified that the tenant smokes outside her window as smoking is not allowed inside the rental premises. She made no allegation that the tenant or her guests are smoking inside the rental premises. The landlord is worried that ashes from the tenant's smoking will cause a fire. She said that the tenant's smoke is jeopardizing her health. When questioned by the tenant's advocate, the landlord testified that she did not raise the issue of the tenant's smoking for the first year of this lease as this is a secondary concern. The landlord testified that her primary concerns arose as a result of a June 30, 2010 incident which led to her calling the police about the the tenant and her friends. She testified that no one was arrested when the police visited the property.

The tenant, her advocate and her witnesses testified that there was no substance to the landlord's claim that the tenant was threatening and significantly interfering with or unreasonably disturbing the landlord. The tenant testified that the landlord has not reimbursed her for her male friend's \$20.67 repair of the locking mechanism on one of her doors. In addition to reimbursement for this receipt, she asked for replacement of the door with one that meets building standards. She also requested a monetary order of \$400.00 to compensate her for two months of wages that she lost as a result of the stress caused by the landlord.

Analysis

Tenant's Application to Cancel the Notice to End Tenancy

The landlord has issued a One Month Notice to End Tenancy for Cause pursuant to section 47 of the *Act* alleging that the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant of the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, and
- (iii) put the landlord's property at significant risk...

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

Based on the conflicting testimony provided, I am not satisfied that the landlord has demonstrated that the tenant has significantly interfered with or unreasonably disturbed her or placed her property at significant risk to the extent necessary to end this tenancy. The landlord confirmed that smoking is not occurring within the rental premises, but outside the building. She also testified that she has not raised concerns about the tenant's smoking outside the building until after the incident of June 30, 2010. She testified that the June 30, 2010 incident was the primary reason for her feeling threatened and seeking an end to this tenancy. I do not accept that the tenant's actions

seriously jeopardize the health or safety of the landlord to the extent necessary to end this tenancy.

While I do not doubt that the landlord finds the existing relationship with her tenant stressful, this is not sufficient on its own to cancel this tenancy for cause. The landlord has not met the burden of proof required to issue a One Month Notice to End Tenancy for Cause for the reasons cited in her July 1, 2010 notice. I allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause.

Tenant's Application for a Monetary Order and Orders for Repairs/Emergency Repairs and an Order that the Landlord Comply with the Act

I accept the tenant's undisputed testimony that the landlord has not reimbursed her for the \$20.67 cost of repairs to the lock on her door. I authorize the tenant to reduce the amount of her next monthly rent payment by \$20.67 to recover this repair cost.

I make no further monetary award in the tenant's favour. I do not grant the tenant's application for a monetary award for lost wages. The medical evidence that the tenant's advocate referred to in support of this claim was a June 16, 2010 note from her doctor stating that the tenant has "an acute medical problem that will keep her off work for the next 2-3 weeks at least." The tenant did not enter into evidence information to demonstrate her lost wages over this period or the period in question.

Based on the testimony heard, I dismiss the tenant's application that the landlord conduct repairs, emergency repairs or that an order be issued requiring that the landlord comply with a provision of the *Act*. The tenant's witness, DF, gave sworn testimony that the repairs he conducted to the locking mechanism on the tenant's door made it more secure than it was when the tenant moved into the rental premises. The tenant's advocate submitted that the repairs were only temporary in nature and that a permanent repair is still required. Insufficient evidence was presented to substantiate the tenant's assertion that the existing door does not conform with building standards.

Conclusion

The tenant's application for cancellation of the Notice to End Tenancy is allowed. The Notice to End Tenancy for Cause is set aside with the effect that this tenancy shall continue.

I authorize the tenant to reduce her next monthly rental payment by \$20.67.

I dismiss all of the tenant's other applications, including her request for repairs, emergency repairs and for an order requiring the landlord's compliance with a provision of the *Act*.

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*.