



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, CNR, MNDC, LRE, LAT, RR, MNSD, OPC, OPR, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy, a monetary order, orders suspending the landlord's right to enter the unit and authorizing the tenants to change the locks and an order permitting the tenants to reduce rent. The hearing also addressed an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing the landlord acknowledged that all the monetary amounts claimed against the tenants were fully satisfied. I consider the landlord's monetary claim to have been withdrawn.

Issues to be Decided

Should the notice to end tenancy for unpaid rent be set aside?

Should the notice to end tenancy for cause be set aside?

Are the tenants entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Should the landlord's right to enter the rental unit be suspended?

Should the tenants be permitted to change locks?

Should the tenants be permitted to reduce their rent?

Background and Evidence

The following facts are not in dispute. The tenancy began in April 2010 at which time the landlord lived in a self-contained suite on the lower floor of the unit. The parties signed an addendum to the agreement whereby the landlord was granted what was termed a fixed term tenancy until June 30, 2010. The addendum stated that the tenant S.T. would reside in the lower suite as of July 1, 2010. The tenants paid \$1,150.00 per month in rent while the landlord was living in the residential property and the rent increased to \$1,650.00 per month after the landlord vacated the lower suite. A number of issues arose which are addressed below.

Notice to end tenancy for cause

On June 23 the tenants were served with a one month notice to end tenancy for cause (the "Cause Notice") which alleged that the tenants had significantly interfered with or unreasonably disturbed the landlord, had seriously jeopardized the health or safety or lawful right of the landlord, had put the landlord's property at significant risk, had engaged in illegal activity that was or was likely to jeopardize a lawful right or interest of the landlord, had breached a material term of the tenancy and not corrected that breach after having been given written notice and had not paid a security or pet damage deposit within 30 days of the time it was required to be paid under the tenancy agreement.

The landlord testified that pursuant to the terms of the tenancy agreement the tenants were required to pay \$1,000.00 for a pet deposit and \$1,000.00 for a security deposit and paid only the pet deposit by means of a cheque. The landlord acknowledged that he was not entitled to receive a pet or security deposit that was equal to more than one half of the rent but argued that the tenants should have paid \$825.00 for each deposit as this is the amount legally permissible for the landlord to collect. The landlord's agent testified that he had a discussion with the tenant S.B. in which she acknowledged that she had paid just \$1,000.00. The tenants claimed that they paid a \$1,000.00 pet deposit by cheque and paid a further \$1,000.00 in cash, for which the landlord did not

issue a receipt. The tenants provided no corroborating evidence such as a bank statement to show that cash was withdrawn from any of their bank accounts at the relevant time.

The landlord testified that the tenants removed his personal belongings from the shed and placed them on the street as well as breaking into the lower suite during the time he occupied that unit. The landlord further testified that the tenants threatened to report the landlord to the police if he would not permit them to stay beyond the one year fixed term of their lease. The landlord testified that the tenants have made substantial changes to the rental unit without his permission, including replacing flooring and cabinetry, fencing and the entrance door. The landlord suggested that cabinetry installed in a walkway had the potential to overburden that area and cause a structural collapse.

The tenants testified that they had advised the landlord that they would be cleaning out the shed and asked him to retrieve any items he wished to keep. The tenants denied having threatened to report the landlord to the police and claimed that the landlord was aware of the changes being made to the rental unit and gave his tacit approval on the condition that they bear the cost of materials and labour. The tenants argued that although the landlord was aware of the changes they were making, he did not tell them to stop work until June 23, the day he served the Cause Notice, and further argued that the changes did not constitute damage to the unit. The tenants indicated that they planned to remove all of the improvements at the end of the tenancy. The tenants acknowledged gaining access to a door which the landlord had blocked, but testified that they were merely attempting to access a common area which contained the breakers and shut off to the water and gas lines.

Notice to end tenancy for unpaid rent

On July 7 the tenants were served with a notice to end tenancy for unpaid rent (the "Rent Notice"). The Rent Notice alleged that the tenants had failed to pay \$500.00 of their rent for the month of July. The parties agreed that on July 1 the landlord had in his

hands a post-dated cheque for \$1,150.00 and further agreed that the landlord was entitled to \$1,650.00 in rent for that month. The tenants testified that they were aware they had not given the landlord a cheque for the full amount of rent owing and provided evidence showing that on June 28 they sent a \$500.00 cheque to the landlord via registered mail to the lower unit where the landlord resided at the time. The landlord did not sign for the registered letter containing the cheque until July 15 as he had arranged for his mail to be forwarded to his new address.

Tenants' claim for stop-payment fee

The tenants seek to recover \$10.00 as the cost of putting a stop-payment order on a cheque written to the landlord. The tenants testified that although the landlord had a cheque for \$1,150.00 and they provided him with a cheque for the \$500.00 balance, the landlord asked them to write a new cheque for the full amount of the rent. The parties agreed that the landlord's agent advised the tenants to put a stop-payment on the cheque.

Tenants' claim for the cost of repairs

The tenants seek to recover \$285.38 as the cost of what they characterize as emergency repairs. The tenants testified that shortly after the tenancy began they complained to the landlord that the gas stove had a gas leak but the landlord refused to replace the stove. The tenants obtained a replacement stove for \$200.00 and purchased a flex pipe as well at a cost of \$29.14 as the old one could not be re-used. The tenants testified that when they obtained possession of the lower unit they discovered that the faucet was leaking in a manner which could not be repaired, so they replaced it at a cost of \$41.43. The tenants also purchased smoke alarms at a cost of \$14.81 as the rental unit had just one smoke alarm.

The landlord testified that the tenants did not complain of a gas leak and that he was unaware of a problem with the stove. The landlord did not comment on the purchase of smoke alarms and the faucet.

Tenants' claim for the cost of paint

The tenants testified that they spent \$534.07 on paint and agreed to cover the cost of the paint themselves with the understanding that they would be residing in the unit for no less than 3 years but now that the landlord has attempted to evict them, they are not confident that they will be able to remain in the rental unit as long as originally hoped.

The tenants testified that when the tenancy ends, they intend to return the rental unit to the same condition in which they received it by finding cabinetry and flooring which was of a similar age to what was in the unit at the start of the tenancy but argued that because they could not remove the paint they were entitled to be reimbursed.

The landlord took the position that the tenants had agreed to pay for the paint and should be held to that agreement.

Tenants' claim for loss related to lower unit

The tenant S.T. seeks to recover \$1,325.30 in moving expenses, \$150.83 as the cost of meals and \$180.00 for the inability to enjoy the lower unit. Pursuant to the terms of the tenancy agreement addendum, S.T. was to begin occupancy of the lower unit on July 1, 2010. The tenants testified that the landlord advised that he did not intend to vacate the rental unit on June 30. S.T. had arranged for a family member to assist her with her move on June 30. The family member would have offered his services free of charge. The tenants testified that as late as June 29 they believed the landlord would not be vacating the rental unit on June 30. The landlord did indeed vacate on June 30. The landlord claims to have vacated by 9:30 p.m. while the tenants claim he did not vacate until 11:30 p.m. S.T. testified that she had to cancel the arrangements with the family member and stay for one additional week at her previous place of residence because she could not move on June 30. S.T. testified that she moved into the lower unit on June 8 and had to hire a moving company because her family member was no longer available to assist her.

The landlord testified that approximately 1 week prior to June 30 he advised the tenants that he did indeed intend to move on June 30.

Tenants' claim for loss of quiet enjoyment

The tenants seek to recover 2 months of rent for loss of quiet enjoyment of the rental unit. The tenants testified that for two months the landlord made unusual demands and accusations and caused such a disturbance in their lives that on June 15 they started sending him what they described as "cease and desist" emails. One of the tenants claimed that the stress resulting from altercations with the landlord has affected her physically, causing her to develop ulcers. The tenants claimed that the landlord is under investigation by the police as a result of the way he has behaved and cited several police file numbers as proof.

The landlord disputed that the tenants were entitled to compensation for loss of quiet enjoyment and argued that police file numbers simply indicate that a call was made to police rather than indicating an ongoing police investigation.

Tenants' claim for litigation-related expenses

The tenants seek compensation for the time spent preparing for this hearing and mailing documents to the landlord via registered mail as well as the filing fee paid to bring their application.

Tenants' claim for lock change and restrictions on landlord's right to access

The tenants seek an order permitting them to change the locks on the rental unit and an order restricting the landlord's access to the unit. The tenants claimed that even though the landlord has vacated the lower unit, he still drives by the unit on a regular basis. The tenants further took issue with the landlord's desire to perform a monthly inspection of the rental unit.

The landlord argued that driving by the unit does not constitute harassment or illegal entry and further argued that monthly inspections were not unreasonable.

Tenants' claim for rent reduction

The tenants testified that they arranged for an electrical inspector to inspect the rental unit and that he found a number of issues which required attention. The tenants claimed that the rental unit has a set of stairs which are structurally unsafe and that the city has issued 30-day repair orders to the landlord. The tenants seek to reduce their rent until such time as the rental unit is made safe for occupancy.

The landlord denied having received an order from the city to perform repairs.

Analysis

Notice to end tenancy for unpaid rent

I find that the tenants paid the outstanding amount by registered mail on June 28 by sending a cheque for \$500.00 to the landlord's address. The fact that the landlord was having his mail forwarded should not negatively impact the tenants' attempt to pay. I find that the landlord is deemed to have received the rental payment on July 3, which was 4 days before the landlord served the Rent Notice. I find that the Rent Notice was void from the outset and I declare it to be of no force or effect. I dismiss the landlord's claim for an order of possession based on the Rent Notice.

Notice to end tenancy for cause

I am not satisfied that the landlord has established grounds to end the tenancy for cause. I find that the landlord was aware that the tenants were making improvements and that he tacitly if not expressly agreed to these improvements on the condition that he not be held responsible for the cost. I find that the tenants had a right to access the common area in which the shut-off valves and breakers were located. While the tenants' removal of the landlord's belongings from the shed was inappropriate and ill advised, I find that this act in itself is insufficient to form grounds to end the tenancy. The tenancy agreement purports to demand an illegal amount for security and pet deposits. I find as a fact that the tenants paid just \$1,000.00 in pet and security

deposits and I find that the landlord does not have the right to demand a further payment from them as the amount which the tenancy agreement requires is not legal. I find that the landlord did not give the tenants a written notice of a breach of a material term of the tenancy agreement prior to the time he served them with the Cause Notice. For these reasons I find that the Cause Notice must be set aside. I order that the Cause Notice be set aside and of no force or effect. As a result, the tenancy will continue. I dismiss the landlord's claim for an order of possession based on the Cause Notice.

Tenants' claim for stop-payment fee

I find that the tenants are entitled to recover the \$10.00 cost of putting a stop payment on their cheque as they were following direction from the landlord's agent. I award the tenants \$10.00.

Tenants' claim for the cost of repairs

I dismiss the tenants' claim for the cost of what they characterize as emergency repairs. Section 33 of the Act provides that emergency repairs must be made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access or electrical systems. A gas leak from the stove is not considered an emergency repair under the Act. Further, there is no evidence to corroborate the claim that there was a gas leak or that the stove could not be repaired. I am unable to find that this was an emergency repair and therefore find that the tenants were obligated to report the problem to the landlord and obtain his consent to act further or first obtain an order from the Residential Tenancy Branch to proceed with repairs. I find that the tenants have not proven that they reported the stove issue to the landlord and gave him an opportunity to repair or replace the stove. I find that the tenants had an obligation to contact the landlord with respect to not only the stove, but also with their request for smoke alarms and for repair of the faucet. While the faucet is a plumbing fixture, I find that as the landlord had successfully used the faucet during his residency in the lower

suite, the leak cannot have been so grievous as to constitute an emergency. The tenants chose to act arbitrarily and without the authority of the landlord, completely disregarding their obligation under the Act to request repairs and obtain prior written approval from the landlord before undertaking those repairs on their own. While it may be true that repairs and smoke alarms were needed, the tenants did not have the right to make a unilateral decision without obtaining consent from the landlord or obtaining an order from this Branch. The claims for the cost of repairs are dismissed.

Tenants' claim for the cost of paint

I also dismiss the claim for the cost of paint. The tenants had the option of negotiating a multi-year tenancy with the landlord but instead chose to enter into a one year, fixed-term tenancy. This tenancy may or may not continue on a month to month basis, depending on the desire of the parties when the fixed term expires. The tenants chose to improve the property at their own expense and may not recover the cost of those improvements because their relationship with the landlord has broken down. I note that in addition to painting, the tenants have made other significant improvements such as flooring and cabinetry which have now become fixtures to the freehold. The tenants may not remove fixtures at the end of the tenancy from the freehold without the prior written permission of the landlord.

Tenants' claim for loss related to lower unit

I dismiss the cost of the tenant S.T.'s moving expenses, meals and loss of enjoyment of the lower unit. While the tenancy agreement addendum calls the landlord a tenant until June 30, it is clear that he is not a tenant but merely was retaining part of the property for his own use up until June 30. I find that he was not a tenant because he did not pay rent to the tenants and did not have the right to request that they perform repairs or maintenance on his unit and still maintained his responsibilities as their landlord during that time period. The tenancy agreement addendum clearly stated that his tenancy ended on June 30. While the Act states that a tenancy ends at 1:00 p.m. on the last day of a tenancy, as the landlord was not a tenant, I find that his right to occupy the unit

did not end until midnight on June 30. S.T.'s right to occupy did not begin until July 1 according to that same addendum. The fact that she arranged for movers to assist her one day prior to the time her right to occupy the lower unit began does not make the landlord liable for loss resulting from her inability to move on that day.

Tenants' claim for loss of quiet enjoyment

I find that the tenants have not proven that they lost quiet enjoyment of the rental unit to an extent that would attract compensation. While it is true that the landlord acted unreasonably in some respects, I find that the tenants also acted unreasonably in some respects and the parties bear equal responsibility for the aggravation each suffered. The fact that the police were called does not prove that there was any criminal activity. I dismiss the claim for loss of quiet enjoyment.

Tenants' claim for litigation-related expenses

I dismiss the tenants' claim for the cost of preparing for this hearing and for sending documents via registered mail. Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fees paid to bring an application for dispute resolution, which is addressed below. If the registered letter costs claimed are not costs associated with litigation but are the cost of sending their rent cheque via registered mail, I would have dismissed that in any event as the landlord should not have to bear the cost of the tenants meeting their obligation to pay rent pursuant to the tenancy agreement.

Tenants' claim for lock change and restrictions on landlord's right to access

I find that the tenants have established no reason why the landlord's access to the rental unit should be restricted or they should be permitted to change locks. Now that the landlord has vacated the lower unit, I see no evidence that there has been any attempt at illegal entry and I find that the landlord should be permitted to inspect the rental unit as reasonably required. I dismiss the tenants' claim for orders restricting the landlord's access and permitting them to change the locks.

Tenants' claim for rent reduction

I dismiss the tenants' claim for a rent reduction. While they submitted a copy of an electrical inspection report, they submitted no evidence to corroborate their claim that the landlord has been required by the city to perform repairs and I am not satisfied that a reduction in rent is warranted.

Landlord and tenants' claims for filing fees

As the tenants have succeeded in their claims to set aside the notices to end tenancy, I find it appropriate that they be awarded the \$50.00 filing fee paid to bring those claims and I award them that sum. The claim for a further \$50.00 filing fee is dismissed as the tenants were substantially unsuccessful in their monetary claims. The landlord will bear the cost of his filing fee as his claim was entirely unsuccessful.

Conclusion

The Rent Notice and the Cause Notice are set aside and of no force or effect. I award the tenants \$60.00 which represents \$10.00 for the stop payment fee and \$50.00 for the filing fee. The tenants may deduct \$60.00 from future rent owed to the landlord.

Dated: August 20, 2010

Dispute Resolution Officer