

DECISION

Dispute Codes CNC, CNR, MNDC, OLC, ERP, RP, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs and emergency repairs to the unit pursuant to section 33; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

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 posted a 10 Day Notice to End Tenancy for Unpaid Rent on the tenant's door on August 4, 2010. She testified that she posted a 1 Month Notice to End Tenancy for Cause on the tenant's door on September 2, 2010. The female tenant (the tenant) testified that she sent the landlord her application for dispute resolution by registered mail and the landlord confirmed having received this application on August 16, 2010. The tenant said that she sent an amended copy of her application for dispute resolution to the landlord by regular mail but was uncertain of the date of her mailing of this application. This application added her dispute of the landlord's September 2, 2010 1 Month Notice to End Tenancy to her previous application. The landlord testified that she had not checked her mailbox recently and had not received the tenants' amended application. I

accept that the landlord served the notices to end tenancy and that the tenant served the initial application for dispute resolution in accordance with the *Act*.

At the commencement of this face-to-face hearing, the landlord submitted copies of both of her notices to end tenancy and requested Orders of Possession for both of these notices. Although she had not received the tenant's amended application to contest the 1 Month Notice to End Tenancy, the landlord asked to proceed to consider her request for an Order of Possession for that notice. As the landlord had not applied for dispute resolution herself, I agreed to her request to consider both the tenants' original and revised applications for dispute resolution. I proceeded to consider the tenants' original application and her revised application for dispute resolution.

Preliminary Matters- Adjournment Request and Serving of Evidence

Prior to the hearing, the tenants made a written request for an adjournment to allow her to produce additional evidence and serve this evidence to the landlord. Although I gave her request consideration, I found that her reasons for requesting an adjournment were not sufficient to warrant the granting of an adjournment. Both parties had taken time from their other duties to attend the hearing. I chose to hear the evidence that they presented, including copies of documents that they provided at the hearing. Both parties were given a full opportunity to discuss and question the evidence provided by the other party at the hearing.

Issues(s) to be Decided

Are the tenants entitled to a cancellation of the landlord's notice to end tenancy for unpaid rent? Are the tenants entitled to a cancellation of the landlord's notice to end tenancy for cause? Is the landlord entitled to an Order of Possession? Are the tenants entitled to a monetary Order? Are the tenants entitled to repairs? Should an order be issued to the landlord requiring compliance with the *Act*? Should the tenants recover their filing fees from the landlord?

Background and Evidence

The parties agreed that this tenancy commenced on March 1, 2008 by way of a one-year fixed term tenancy. When the initial year of that tenancy ended, the tenants continued living in the rental premises on a month-to-month basis. The present monthly rent is set at \$950.00, payable on the first of the month. The landlord continues to hold a security deposit plus interest.

Background and Evidence – 10 Day Notice to End Tenancy for Unpaid Rent

The landlord testified that the tenants owed three months rent when she issued the 10 Day Notice on August 2, 2010. Although she identified \$3,800.00 as the amount owing in that notice, she testified that she received the tenants' \$950.00 cheque for May 2010 on June 24, 2010. She provided undisputed oral and written testimony at the hearing that she received the tenants' cheque for \$2,850.00 on August 14, 2010 which looked after the outstanding rent for June, July and August 2010.

The tenants testified that they did not have an accurate mailing address where they could send their rent cheques until they received the landlord's notice to end tenancy.

Analysis – 10 Day Notice to End Tenancy for Unpaid Rent

The tenants applied for dispute resolution to cancel the landlord's notice to end tenancy for unpaid rent within the time frame allowed under subsection 46(4) of the *Act*. While the tenant agreed that they did not pay their rent for June, July and August 2010 on time, the landlord did accept their \$2,850.00 cheque for these months. The landlord did not provide any explanation regarding the difference between the amount of unpaid rent cited in her notice to end tenancy (i.e., \$3,800.00) and the rent owing and paid by the tenants for the three months in question (i.e., \$2,850.00). The landlord cashed this cheque and did not testify that she accepted their rent cheque for use and occupancy only. By cashing the tenants' rent cheque as she did, the landlord continued this tenancy at that time and waived her right to pursue her 10 Day Notice to End Tenancy for Unpaid Rent.

Based on the landlord's acceptance of the rent on August 14, 2010, I allow the tenants' application for cancellation of the landlord's notice to end tenancy for unpaid rent.

Background and Evidence – 1 Month Notice to End Tenancy for Cause

The landlord cited the following two reasons in his application for a 1 Month Notice to End Tenancy for Cause:

...The tenant is repeatedly late paying rent...

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order...

With respect to the late payment of rent, the landlord entered written evidence from the person she hired to look after the rental premises describing what he described as a long pattern of late payment of rent by the tenants. In this written statement, her agent noted that the tenant provided many different reasons why she could not pay her rent on time, including having to order new cheques, running out of cheques, and only having a few cheques left to pay other bills.

The tenant attributed the problems in rent payment to the landlord's representative who had not established a consistent method of rent payment. She said that the landlord's representative picked up the cheques from the tenant directly and did not provide a proper and complete mailing address that would enable her to send the cheques directly to the landlord until recently. She also noted that the process used by the landlord's representative did not lead to the rent cheques being cashed until long after the cheques had been submitted by the tenants.

Analysis - 1 Month Notice to End Tenancy for Cause

Residential Tenancy Policy Guideline #38 provides the following guidance regarding the circumstances whereby a tenancy may be ended for late payment of rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions...

There was no dispute that the tenants understood that they were supposed to pay all of the rent by the first of each month. The evidence presented indicates that the tenants have been late in paying their rent on at least three occasions. Although the tenants provided different reasons and explanations for their late payment of rent, I am satisfied that there is a pattern of late payment that seems to have extended throughout much of this tenancy. While I accept the tenants' undisputed testimony that the landlord's representative had not established a consistent manner of collecting their monthly rent, I do not accept that they were justified in repeatedly failing to pay their rent on time.

The female tenant testified that she only received an accurate mailing address for the landlord by the middle of June 2010. Prior to then, she said that the landlord's representative gave her an incomplete address which did not include the city where the landlord's PO Box was located. Once she received the complete address by mid-June 2010, the female tenant testified that she sent the landlord her rent cheque for May 2010. She said that she did not send any additional rent cheques until she was certain that the cheque had been received by the landlord and cashed. She did not send rent cheques for June, July or August 2010 until mid-August 2010.

On the basis of this evidence, I dismiss the tenants' application to cancel the landlord's One Month Notice to End Tenancy for Cause on the basis of the tenants' repeated late payment of rent. This tenancy was scheduled to end on September 30, 2010. At the hearing, the landlord recognized that it would be difficult for the tenants to meet this deadline for ending this tenancy. I issue the landlord an Order of Possession to take effect at one o'clock in the afternoon on October 31, 2010.

Although there is no need to consider the other grounds cited in the landlord's notice to end tenancy for cause, I am unwilling to accept the landlord's assertion that the tenants failure to comply with inspection notices also allowed the landlord to cancel this tenancy. The tenants submitted convincing written evidence that the landlord did not include her name, signature or date on these inspection notices. The tenants

maintained that they questioned the authenticity of the landlord's requests to inspect their premises. The landlord said that she thought that she signed and dated them.

Background and Evidence – Tenants' Application for a Monetary Order

The tenants testified that they applied for a monetary Order of \$1,650.00 because the landlord had not provided them with a storage locker that came with the rental premises. They calculated the \$1,650.00 figure they requested by estimating that their rent should have been discounted by 15% during the course of their tenancy for the landlord's refusal to let them use the storage locker in question. The landlord testified that storage was provided in the rental premises and that she had never included the storage locker in any of her rentals to tenants occupying this suite.

Analysis – Tenants' Application for a Monetary Order

I dismiss the tenants' application for a monetary Order as they provided no evidence to confirm that the storage locker was included in their tenancy agreement.

Background and Evidence – Tenants' Application for an Order to the Landlord to Comply with the Act

The tenants applied for the issuance of a number of Orders to the landlord, many of which would only be of use if the tenancy were to continue. The tenants maintained that the landlord had never provided them with a copy of their signed residential tenancy agreement. The landlord did not have a copy of that agreement with her and testified that the original had been returned to the tenants.

Analysis - Tenant's Application for an Order to the Landlord to Comply with the Act

Section 13 of the Act reads in part as follows:

- 13 (1) *A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004...*
- (3) *Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of that agreement...*

Although I am issuing an Order of Possession to the landlord, the landlord should ensure that the tenants have a copy of the signed residential tenancy agreement. As it is uncertain that the landlord provided a copy of this agreement to the tenants, I order the landlord to send the tenants a copy of the residential tenancy agreement within 7 days of receiving this decision.

Background and Evidence – Repairs and Emergency Repairs

The tenant provided testimony regarding a number of areas of the rental premises where she believed that the landlord needed to make repairs. She described some of these matters as requiring emergency repairs, while others needed repair. These items included leakage from the toilet, repair of a wall behind the toilet and a hole around a light fixture, carpet replacement, and pests including silverfish in the rental premises.

The landlord testified that her representative had visited the rental unit a number of times to examine these concerns. The landlord concluded that most if not all of these were requests from the tenants to upgrade the existing rental unit with replacement fixtures and features that were not present when they rented this unit.

Analysis – Repairs and Emergency Repairs

This tenancy is ending soon and I do not find that any of the items requested require emergency repairs. As it would seem that the landlord may wish to address some of these issues when the premises are vacated, I dismiss the tenant's application for repairs and emergency repairs.

Filing Fee

As the tenants have not been successful in most of their application, I do not find that they are entitled to recover their filing fee from the landlord.

Conclusion

I allow the tenant's application to dismiss the landlord's 10 day Notice to End Tenancy for Unpaid Rent. I dismiss the tenants' application to cancel the landlord's 1 Month

Notice to End Tenancy for Cause. I issue the attached Order of Possession which takes effect at one o'clock in the afternoon on October 31, 2010.

I dismiss the tenant's application for a monetary Order. I dismiss the tenants' application for an order requiring the landlord to undertake repairs or emergency repairs. I order the landlord to send the tenants a copy of the residential tenancy agreement that applies to this tenancy within 7 days of this decision. I dismiss the tenants' application for recovery of their filing fees from the tenants.

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*.