

DECISION

Dispute Codes CNL, MNDC, ERP, RP, RR

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs and emergency repairs to the unit pursuant to section 33; and
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

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 he sent the tenant a 2 Month Notice to End Tenancy for Landlord Use of the Property for landlord renovations on August 31, 2010 by registered mail. The tenant confirmed receiving this notice. The tenant testified that she sent the landlord a copy of her application for dispute resolution by registered mail on or about September 10, 2010. The landlord confirmed receiving this material on September 13, 2010. I am satisfied that both parties were served with these documents in accordance with the *Act*.

Although the parties had exchanged their written evidence with one another, the landlord's written evidence was not before me at the time of the hearing. The landlord agreed to re-send his written evidence to me after the hearing. I received this documentation after the hearing and considered it as part of my decision.

The landlord made an oral request for an Order of Possession if the tenant's application to cancel the notice to end tenancy were dismissed.

Issues(s) to be Decided

Is the tenant entitled to a cancellation of the landlord's notice to end tenancy for landlord use of the property? Is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary Order from the landlord? Is the tenant entitled to an order requiring the landlord to conduct repairs or emergency repairs to the rental premises? Is the tenant entitled to reduce her rent for services or facilities agreed upon but not provided?

Background and Evidence

This tenancy commenced initially as a one-year fixed term tenancy on October 15, 2004. The tenancy has subsequently converted to a periodic tenancy whereby the tenant pays \$696.00 on the first of each month. This tenancy includes heat, hot water, parking and storage.

The landlord submitted evidence regarding plans to end this tenancy and renovate this rental unit. He said that additional time was given to the tenant to allow her to find other accommodations. He said that the landlord plans to commence removing material from the rental unit after the scheduled end to this tenancy on November 30, 2010. He said that the renovations are planned to begin in January 2011. The landlord submitted evidence regarding the renovation of two other suites in this building as part of the landlord's plans to renovate this older building.

The tenant testified that she believes that the rental premises require repairs and not renovations. She said that she has been raising concerns about a number of problems in her rental unit since January 2010 and that many of these issues have not been adequately addressed. She asked for a monetary Order to allow her to repair problems with mould, mice, holes in walls, and various other issues she has brought to the landlord's attention. She testified that she has not spent any money of her own on repairs but would do so if the landlord would reimburse her for these repairs. She testified that the landlord has not been successful in dealing with a mice infestation in

her rental unit. She asked for a reduction in her rent for the landlord's inability to provide her with the services and facilities that she agreed to rent.

Analysis

Tenant's Application to Cancel Notice to End Tenancy and Landlord's Request for an Order of Possession

Section 48(1)(6)(b) of the *Act* allows a landlord to end a tenancy "if the landlord has all necessary permits and approvals required by law, and intends in good faith... to renovate or repair the rental unit in a manner that requires the rental unit to be vacant."

In this case, the landlord's good faith intention to conduct the renovations proposed are not at issue. The landlord has provided sufficient evidence to demonstrate that the landlord does in fact intend to renovate this rental unit in concert with an overall schedule of renovations in this building. However, the tenant questioned the status of the landlord's permits and approvals and whether it was necessary to end her tenancy in order to conduct this work. The landlord testified that the contractor hired to do this work noted in a letter entered as written evidence that no building permits would be needed to conduct this renovation due to the nature of the renovations involved. He also referred to a letter that he had written to the Residential Tenancy Branch in support of the notice to end tenancy issued to the tenant.

In reviewing this matter, I am not convinced by the landlord's evidence that the proposed renovation meets the standard required by section 48(1)(6)(b) of the *Act* to permit the issuance of a notice to end tenancy for this renovation. The landlord and his contractor may be correct in asserting that no building permit is required for the renovation of this unit. However, the contractor's letter does not convince me that there is any certainty regarding the plans for renovating this unit. As noted below, there is considerable uncertainty as to the landlord's plans for this rental unit.

...When we are able to finalize the exact dimensions that you would like the kitchen to be, at that point I can provide you with a quote based on the square footage and the type of flooring you decide upon in the respective areas.

Please contact me when the suite is vacant so that we can finalize the details and cost of the proposed design changes...

Even if the landlord is correct in maintaining that no permits are necessary to complete this renovation, I am not satisfied that plans are finalized to the extent necessary to confirm that the tenant would need to vacate this rental unit in order to conduct the intended renovations. In the absence of sufficient evidence from the landlord to demonstrate the magnitude of the intended renovation, I allow the tenants' application to cancel the landlord's notice to end tenancy. Under these circumstances, I do not approve the landlord's oral request for an Order of Possession.

Tenant's Application for a Monetary Order and Orders Requiring the Landlord to Conduct Repairs and Emergency Repairs

The tenant testified that she has not spent any of her own money to repair the rental premises. As such, I see no basis to award her a monetary Order for damage or loss arising out of this tenancy. I dismiss her application for a monetary Order.

I am also satisfied by the landlord's evidence regarding the repairs that have now been completed on the rental unit. I dismiss the tenant's application for repairs and emergency repairs.

Tenant's Application for a Reduction in Rent

The tenant testified that from January 2010 until the present, she has been encountering difficulties in obtaining a resolution of her concerns about a mice infestation, black mould, a water leak and kitchen problems. The landlord provided evidence that repairs have been conducted and that pest control services have been retained to attempt to deal with the mice problem in her rental unit.

Although I am satisfied that the landlord has taken action by the time of this hearing to address the problems cited by the tenant, I accept that the tenant's quiet enjoyment of her rental unit was compromised for a period of time while the landlord attempted to deal with these issues. I find that the tenant's quiet enjoyment of the rental premises was reduced from February 2010 until the end of September 2010. I allow the tenant a rent reduction of \$25.00 per month over this eight month period for a total reduction in rent of \$200.00. I allow the tenant to reduce her next scheduled monthly rent payment by \$200.00 to address this order. This rent reduction is limited to this eight month period as I am satisfied that the landlord has now taken adequate steps to address the tenant's concerns. Once the \$200.00 reduction for the next scheduled monthly rent payment occurs, the tenant's rent reverts to \$696.00 per month.

Conclusion

I allow the tenant's application to cancel the landlord's notice to end tenancy. The effect of this finding is that the tenancy continues and the landlord is not issued an Order of Possession. I dismiss the tenant's applications for a monetary Order, for repairs and for emergency repairs. I allow the tenant's application to obtain a reduction in her rent over the eight-month period from February 2010 through September 2010. This results in a \$200.00 reduction in rent over this period which I allow her to reduce from her next scheduled monthly rent payment.

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*.