



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, DRI, LRE, RPP
 OPC, OPB, MNR, FF

Introduction

This matter dealt with an application by the Tenants to cancel a One Month Notice to End Tenancy for Cause dated August 23, 2010, to dispute a rent increase, for an Order restricting the Landlord's right to enter the rental unit. The Tenants withdrew their application for an Order that the Landlord return the Tenants' personal property.

The Landlord applied for an Order of Possession and for a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Is it necessary to place restrictions on the Landlord's right to enter the rental unit?
3. Are there rent arrears and if so, how much?

Background and Evidence

This month to month tenancy started on December 1, 2009. Rent is \$650.00 per month payable in advance on the last day of each month. On August 23, 2010, the Landlord served one of the Tenants (D.M.) with a One Month Notice to End Tenancy for Cause dated August 23, 2010. The grounds listed on the Notice were as follows:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has caused extraordinary damage to the unit/site or property/park; and
- Tenant has not done required repairs of damage to the unit/site.

The Landlord claims that on August 21, 2010, one of the Tenants (D.M.) pruned the lower limbs of a large golden Cedar tree on the front lawn of the rental property without her consent. The Landlord also claimed that the Tenants cut down some perennials (ie. irises) without her consent. The Landlord said it is a term of the tenancy agreement that the Landlord is responsible for yard maintenance. The Landlord claimed that with

the roots now exposed, the lawn cannot be mowed in that area and will have to be landscaped.

The Tenants admitted that they cut the limbs off of the tree without the Landlord's consent but claimed that they contained garbage and housed rats. The Tenants said that out of concern for the safety of their dog, they removed the limbs and claimed the tree was not harmed and that they fertilized and re-seeded the area under the removed limbs. The Tenants argued that the tree was on a right of way owned by the municipality. The Landlord provided an e-mail from the municipality in which they claim that on inspection of the property by a surveyor, "the tree in question" was on the Landlord's property. The Tenants also argued that they did not dig up the Iris rhizomes and therefore if that perennial was living to begin with it would not have been killed by cutting off the brown leaves. The Tenants said they made these "repairs" because Landlord failed to maintain the yard on the property.

The Landlord claimed that on July 14, 2010, one of the Tenants (D.M.), had a loud argument with a guest and he later advised the Landlord that his guest had accused the Tenant of "taking his pot." The Landlord then said that on August 23, 2010 she noticed through the open window of the small bedroom in the rental unit that the closet area had mildew, that the walls had been primed and had red tape marks. The Landlord said this led her to believe that the Tenants had used the room as a marijuana grow-op so she took pictures of it through the window.

The Tenants claimed that when they moved into the rental unit, the carpets were still damp when they put boxes and other items on the floor of the small bedroom to store. The Tenants said they only discovered some time later that the bottom of the boxes were mouldy. The Tenants said that because most of the boxes were stored in the closet area, it sustained the most of the mildew damage. The Tenants said that as a result of the mould, they primed the walls with a mould retardant and cleaned the carpets. The Tenants argued that it was unreasonable to suggest that they would operate a grow-op only 10 feet away from the Landlord's residence when they often kept their windows open for ventilation.

The Landlord also claimed that the Tenants were unreasonably disturbing her and her spouse both of whom also reside on the rental property (in another house). In particular, the Landlord claimed that one of the Tenants, (D.M.), has been confrontational with her and her spouse on a number of occasions. The Landlord said that on August 8, 2010, she saw the Tenant cleaning fish beside the rental unit and asked him not to do so because it would attract flies. The Landlord said the Tenant yelled at her and told her it was good for the grass. The Landlord said on August 9, 2010, the same Tenant demanded that she repair a tap on the outside of the rental property. The Landlord said the Tenant also claimed that there was a mould problem in

Residential Tenancy Branch
Ministry of Housing and Social Development

the rental unit and threatened to call the Health Inspector and have her shut down. The Landlord said she advised the Tenant that he should clean the mould with bleach and open the bathroom window after showering to remove excess moisture. The Landlord said the Tenant also told her to stop coming onto his property (outside). The Landlord said she could not tolerate the Tenant's arrogance so she shut the door on him. The Landlord's spouse gave evidence of a confrontation with D.M. on October 2, 2010 when he was cutting the grass, however the Landlord admitted that this occurred after she served the Tenants with the Notice to End Tenancy and was not therefore a reason for serving the Tenants with the Notice.

The Landlord said that the Tenants do not pick up dog feces from the yard and that one of the Tenants (D.M.) built a smoker beside the rental unit and operates it unattended at night. The Landlord said this is unsafe and gives off a strong odour of smoke and fish. The Landlord said she left the Tenant a note asking him to remove the smoker but he confronted her angrily, threw the note away and told her not to leave him any more notes.

The Landlord also claimed that on one occasion she entered the rental unit for an inspection and found a pot of potatoes boiling on the stove unattended. The Landlord claimed that the Tenants had not turned on the ceiling fan and she believed that they were deliberately trying to create a mould problem in the rental unit. The Landlord claimed that she had no mould problems with other tenants. The Landlord said the Tenants do unauthorized things when she is away and she does not trust them. The Landlord also claimed that another tenant of the rental property advised her that he was moving out because he was fed up with D.M. The Tenants' witness gave evidence refuting this.

The Tenants said that they have become frustrated with the Landlord's constant interference and admitted that D.M. had become angry with the Landlord on some occasions. The Tenants claimed that the Landlord complains to them just about every day about things such as cleaning out the garbage cans, or cleaning their front porch, or removing dog feces from the yard. The Tenants said the Landlord has also showed little respect for their privacy and claimed that they were advised by their neighbour that the Landlord gave him a key to the rental unit and asked him to look around for evidence of a grow-op. This witness also adopted his written statement in which he deposes that the Landlord asked him to enter the Tenants' rental unit while they were not home. The Tenants said the Landlord's spouse mows the lawn by their suite without any notice to them and damages any items that might be left on the lawn. The Tenants claimed that during the confrontation with the Landlord's spouse on October 2, 2010, the Landlord's spouse called D.M. inappropriate names and struck him (which the Landlord and her spouse denied). The Landlord argued that it was common property and therefore she did not have to give the Tenants any notice .

The Tenants denied that they were deliberately causing a mould problem. The Tenants claimed that there was inadequate ventilation in the rental unit causing excessive moisture to accumulate. The Tenants said they tried to reduce the moisture by keeping windows open but this was not always possible especially when they were not home. The Tenants said they thought it was unreasonable for the Landlord to tell them to bear the expense of buying bleach to deal with the recurring mould problem.

The Parties agree that the Tenants have not paid rent for October 2010. The Tenants admitted that they withheld rent because the Landlord would not repair the outside tap and took their hose so that they could not water the lawn.

Analysis

In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy.

I find that there is insufficient evidence that the Tenants have caused extraordinary damage to the rental unit or property. The Landlord said she was most concerned about the golden Cedar that one of the Tenants had pruned without her consent. I find it was improper for the Tenants to prune the tree and to cut back the Landlord's irises even if the Landlord was not maintaining the property as they claimed. However, I also find that there is no evidence that the tree or the iris were irreparably damaged or suffered extraordinary damage as a result. If the Landlord has to incur expenses to remedy the landscaping as a result of the Tenants' actions, as she claimed, then she can always seek compensation from them for having to do so. However, the Tenants are now on notice that there are not permitted to perform any of the Landlord's yard care responsibilities without her prior consent.

I also find that there is insufficient evidence that the Tenants were using a small bedroom in the rental unit as a grow-op or that they were deliberately trying to "breed mould." I further find that there is no evidence to conclude that the Tenants have failed to make required repairs and in particular, I find that the Tenants did make repairs to remove mould from the small bedroom when they discovered it. I also find that there is no evidence that the Tenants' smoker posed a safety risk although the smell it may have been a nuisance to the Landlord.

The Landlord claimed that the Tenants had significantly interfered with or unreasonably disturbed another occupant because another tenant ended his tenancy due to the actions of the Tenants. However, this tenant gave evidence at the hearing denying that this was the case. The Landlord also claimed that the Tenants had significantly

Residential Tenancy Branch
Ministry of Housing and Social Development

interfered with or unreasonably disturbed her because (D.M.) had been confrontational with her on a number of occasions. The Tenants gave evidence that their reactions to the Landlord were the result of their building frustration with the Landlord continually complaining to them and not respecting their right to privacy.

Having regard to the whole of the evidence, I find that there is evidence that the Tenant, (D.M.) did disturb the Landlord by becoming angry and confrontational with her, however, given the circumstances, I cannot conclude that this was an unreasonable reaction. In particular, I find that many of the Landlord's actions were provocative and would reasonably have frustrated many tenants. For example, I find it unsettling that the Landlord would stick her head in the Tenants' open window to take photographs of one of their rooms (instead of doing it during a scheduled inspection) and offer a key to another tenant to look around the rental unit for her when the Tenants were not home. I also find it unreasonable that the Landlord left a bucket of dog feces on the Tenants' door step because she believed it was from their dog and they had failed to pick it up and that her spouse carelessly destroyed items with the lawn mower that they left on the lawn.

I find that this is a case where two Parties have clashed because they have unreasonable expectations of each other and do not fully understand their rights and responsibilities. The Tenant (D.M.) has erroneously concluded that he is entitled to do whatever he wants with the Landlord's rental property (such as pruning trees and erecting a smoker) and the Landlord has erroneously concluded that the Tenants must comply with her every order no matter how small. The Act, however, tries to provide a balance of rights such as for example, a Tenant's right to privacy and use of common areas free from significant interference by the Landlord with the Landlord's right to the timely payment of rent from the Tenant and to the preservation of the rental property.

Consequently, for the reasons set out above, I find that there is insufficient evidence to make out the grounds set out on the One Month Notice to End Tenancy for Cause dated August 23, 2010 and it is cancelled. The Parties agree that rent has not yet been paid rent for October 2010. Consequently, I find that the Landlord is entitled to a Monetary Order for unpaid rent to date or for the period October 1 – 7, 2010 in the pro-rated amount of **\$146.78**. If the Tenants fail to pay this or the balance of the rent for October, the Landlord may after serving them with a 10 Day Notice for Unpaid Rent, apply for an Order of Possession. As the filing fees for each party would be offsetting, that part of their respective claims is dismissed without leave to reapply.

While I make no Order at this time to terminate or place restrictions on the Landlord's right to enter the rental property, she is now on Notice that some of her actions to date have interfered with the Tenants' right to quiet enjoyment and that she is not permitted to enter the rental unit except for reasons set out under s. 29 of the Act. If she does so,



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

the Tenants may reapply for an order restricting or terminating her right to enter the rental unit.

Conclusion

The Tenants' application to cancel the One Month Notice to End Tenancy for Cause dated August 23, 2010 is granted. The Tenant's application to dispute a rent increase and to place restrictions on the Landlord's right to enter is dismissed with leave to reapply. The Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$146.78** has been issued to the Landlord and a copy of it must be served on 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*.

Dated: October 07, 2010.

Dispute Resolution Officer