



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, CNR, MNR, MNDC, LAT, AS

Introduction

This hearing dealt with an application by the tenants for an order setting aside notices to end this tenancy, a monetary order, an order permitting them to sublet the rental unit and an order permitting them to reduce rent. Both parties participated in the conference call hearing.

At the hearing the parties confirmed that although the landlord had originally entered into a tenancy agreement with the tenant L.W. for the entire rental unit, this was later changed to separate tenancy agreements with several tenants, each for a bedroom and use of common areas. Although L.W. and L.C. made the application together as co-tenants, based on the testimony I am unable to find that they are co-tenants and therefore should have made separate claims. I have dealt with the notices to end tenancy as they relate to both L.W. and L.C. because the limitation period has passed with respect to disputing the notices and it would severely prejudice whichever tenant was omitted from the application, but for the remaining claims have addressed the claims only as they relate to the tenant L.W. as he is the party who gave evidence on these issues. L.C. is free to bring a claim of his own in a future application.

In this decision where tenants is used in its plural form it refers to both L.W. and L.C. and where it appears in its singular form it refers to only L.W.

Issues to be Decided

- Should the notice to end tenancy for cause be set aside?
- Should the notice to end tenancy for unpaid rent be set aside?
- Is the tenant entitled to a monetary order as claimed?
- Is the tenant entitled to other orders as claimed?

Background and Evidence

The parties agreed that each of the tenants are obligated to pay \$266.66 in rent in advance on the first day of each month. The parties further agreed that on January 5 the tenants were served with 2 notices to end tenancy, one for unpaid rent (the "Rent Notice") and one for cause (the "Cause Notice").

At the hearing the landlord acknowledged that the tenant L.C. had paid all his rent within 5 days of receiving the Rent Notice. L.W. acknowledged that he did not pay rent in the months of October – December inclusive and claimed that he tried to pay his rent, but the landlord did not come to the rental unit to collect it and did not answer the door when the tenant went to the landlord's house to pay it. The landlord testified that attempts were made to collect the rent but the tenant told the landlord that he would not pay it. The parties agreed that when the tenant made his application for dispute resolution he contacted the landlord and advised that he had the landlord's copy of his application. The parties met and the tenant gave the landlord the application for dispute resolution together with rent for January.

The landlord testified that the Cause Notice was served because the tenants had been late with their rent payments on two occasions.

The tenant testified that the roof of the rental unit has been leaking for a considerable time and that despite frequent complaints to the landlord, it has not been adequately repaired. The tenant testified that the ceiling in his bedroom collapsed, damaging his goods including a computer monitor and printer, his bed, a stereo and speakers. The tenant valued those items at \$3,000.00. The tenant provided photographs showing the state of the bedroom. The tenant further testified that on Christmas Eve he was in the midst of preparations for Christmas dinner when the ceiling over the kitchen sink collapsed. The tenant provided photographs which he testified were taken immediately after the collapse occurred. The tenant stated that the holes in the ceiling have not been repaired and that his heating bill has skyrocketed as a result of heat escaping into the attic. The tenant claims an additional \$960.66 for heating costs.

The landlord testified that the roof has been repaired each time the tenant complained and suggested that the tenant caused the collapse, stating that part of the collapsed area was square which would be unlikely if a natural collapse had occurred.

Analysis

Residential Tenancy Policy Guideline 38 provides that in order to end a tenancy for repeated late payment of rent, there must have been a minimum of 3 late payments. I find that as the landlord has acknowledged that there have not been 3 late payments, she has not

established grounds to end the tenancy for cause. I order that the Cause Notice be set aside and of no force or effect.

I find that L.C. cancelled the Rent Notice as against him by paying arrears within 5 days of having received the Rent Notice. Even if I were to accept that the landlord failed to collect rent from L.W. in October – December, L.W. still owes the rent to the landlord and had opportunity to pay it on January 10, which would have cancelled the Rent Notice. Instead, L.W. chose to pay only January's rent on that date. I find that the landlord has established grounds to end L.W.'s tenancy and therefore I dismiss the application to set aside the Rent Notice. As the effective date of the Rent Notice has already passed, I order that the tenancy end immediately.

As for L.W.'s monetary claim, he limited his claim to the value of his goods and the heating bill. L.W. bears the burden of proving not only liability, but also the quantum of his claim. I accept that the landlord's repairs were inadequate and that the ceiling collapsed in both the bedroom and the kitchen. I further accept that the landlord has failed to repair the ceiling. However, L.W. provided no evidence as to the value of the items he claims were damaged and although some of the items are shown in the photographs, he did not provide proof that they were irreparable. I am unable to determine the value of the items in the absence of any evidence. L.W. also did not provide proof that his heating bill is significantly higher. I find that L.W. has not proven the quantum of his claim and I dismiss the monetary claim. I note that L.W. did not make a claim for loss of quiet enjoyment, but rather limited his claim to the value of the items he claims were damaged and the cost of the heating bill.

As the tenancy will be ending it is unnecessary to address the claims for an order permitting L.W. to sublet the rental unit and an order permitting him to reduce rent.

Conclusion

The Cause Notice is set aside. The remainder of the application is dismissed. The tenancy will end immediately.

Dated: January 26, 2011

Residential Tenancy Branch