Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC MNDC RP PSF RR F

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to order the Landlord to make repairs to the unit, site or property, to order the Landlord to provide services or facilities required by law, to allow the Tenant reduced rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally on approximately February 2, 2011. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the 1 Month Notice to End Tenancy been issued and served in accordance with the Act?
2. If so, has the Landlord met the burden of proof to establish cause to end this tenancy?
3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof for a monetary claim, to order the Landlord to make repairs, to provide services or facilities required by law, and to allow the Tenant reduced rent?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy agreement effective September 1, 2010 which is set to switch to a month to month tenancy after August 31, 2011. Rent is payable on the first of each month in the amount of $1,388.00. The Tenant paid a security deposit of $694.00 on or before September 1, 2010. The parties attended a dispute resolution hearing on December 16, 2010 where a previous notice to end tenancy for cause was set aside.

The Landlord testified that after they had attended the hearing in December she had hoped things would just quiet down in the building; however there have been continual noise complaints since then. She stated that at the onset of the tenancy the Tenants were provided a copy of their tenancy agreement and a copy of the Form "K" which explains the Strata regulations.

The Landlord is now being fined by the management company $50.00 for each violation or noise complaint relating to this Tenant. She made reference to a copy of a letter dated February 1, 2011 which was provided in her evidence which confirms the fines and also states that there have been 17 complaints received against this rental unit for noise and of use of marihuana. The Landlord stated that this problem has become chronic where these complaints are discussed at every council meeting and she receives complaints on a regular basis. To date the Landlord has been fined $150.00 and although she has requested the Tenants pay the fines they have not.

The Landlord stated that prior to this tenancy the Tenants occupied a different unit and when they were moving into this unit she was very clear about concerns about noise complaints and smoking marihuana. She has had to deal with complaints about these issues right from the start of this tenancy. She said that previously she would call and advise the Tenant about the complaints. She received three more complaints of "excessive noise & the use of marijuana" on December 26, 2010, January 9, 2011, and January 11, 2011 so she issued a letter which states "This is our final notice" dated January 13, 2011 and posted it to the Tenant's door. She provided a copy of this letter in her evidence. When the complaints about noise and marihuana use continued she issued another 1 Month Notice to End Tenancy (from here on referred to as the Notice) which she personally served to the Tenants on January 26, 2011 along with another copy of the January 13, 2011 letter.

The Landlord advised the Notice was issued for the following three reasons:

1) The tenant has seriously jeopardized the health or safety or lawful right of another occupant because they continue to smoke marihuana in the rental unit which negatively affects the health of the tenants in the unit next door.
2) They have adversely affected the quiet enjoyment of several other tenants. There have been numerous noise complaints to the point where the Landlord is now getting fined $50.00 for each complaint.
3) The lawful right or interest of the Landlord has been jeopardized because the Tenant is refusing to pay the fines and is not complying with the rules so the Landlord bears the burden of these fines.

The Landlord stated they have 28 rental units in this building and they are seeking to have quiet in the building.

The Tenant testified and stated the Landlord's allegations are incorrect. He contends the Landlord's evidence is from only one other tenant and the complaints are from prior to the December 16, 2010 hearing.

He stated he never received the January 13, 2011 letter until he was served with the 1 Month Notice. He lives in a unit where his door is in an open courtyard so anyone could have taken the letter off of his door. Based on his knowledge he won the case from December 16, 2010 and now the Landlord is trying to refer to her previous evidence. He resides in the unit with his wife and two children so they are not noisy and partying late into the evening. He states there has been no partying and no weed smoking and they shut things down by 9:00 p.m. even when he hosts poker games.

The Tenant stated the Landlord does not call him anymore and he is of the opinion that there are no problems. Then he received a letter saying he had an uninsured vehicle in the parking stall. He states he has insurance and confirmed that he has not yet provided evidence of the insurance to the management company.

He confirms receiving a letter stating that he could be fined but that he does not recall receiving any other letters.

The Tenant is seeking $300.00 for monetary compensation for not receiving a second fob to enter the parking garage. He has requested a second fob for several months now and the Landlord has stated he had to wait until they ordered more. He has never requested the second fob in writing and he does not think his tenancy agreement indicates anything to do with fobs. He continuously requests this and the Landlord has just kept putting him off so he is seeking $50.00 per month for having to wait.

His request for Orders to have the Landlord repair the unit, to provide services required by law, and for reduced rent all pertain to a problem with his telephone access in the unit. He stated that he was trying to switch to another telephone supplier when they determined there was something wrong with the equipment in the main telephone room. He states they were calling the Landlord requesting she have the issue resolved and it was not until the day after he served the Notice of Dispute Resolution that they were advised the problem was getting looked into. He confirms the issue has now been resolved and the problem with the telephone system was repaired about 1 ½ weeks ago.

The Landlord stated that the Tenant has used the excuse of not receiving notices posted to the door before so that his why she ensured her final warning letter was heavily secured to the door and why she provided him with a second copy of the letter when she served him with the 1 Month Notice. An example is when the Strata Council posted notices to every door about not smoking marihuana in the units and he was the only Tenant to claim they had not received the notice.

She opposed the Tenant's testimony that it is only one tenant making the complaints. She knows for certain that a total of 4 tenants have issued written complaints as noted in her evidence and 3 others have complained verbally, not wanting to be identified.

The Landlord confirmed she has been told the problem with the telephone system has been repaired and wants to make it clear that she does not have access to the telephone room even though she is the president of the strata council. The telephone room is looked after by the management company and she has no idea why the problem was resolved when it was because they were looking after it. She informed the Tenant's wife that it was the management company's responsibility so they knew to be dealing with them and not her about the issue.

She confirmed there has been a delay in getting the Tenant another fob for the garage however they did have a meeting scheduled but the Tenant's wife did not show up. She has the fobs and was waiting for the Tenant to contact her again about them.

In closing the Landlord stated she is seeking to have it quiet in the building again and had hoped that after the December hearing this would happen. Then she received the three complaints so she issued the final letter hoping it would resolve the situation. During the weekend of January 23, 2011 the Tenant had caused enough noise that the Landlord received three more complaints so she felt she had no choice but to issue another Notice.

The Tenant stated the Landlord is only 15 feet away so he questioned why she could not have delivered the fob to them. It seems she can walk that distance to tape a notice to our door so why can she not deliver the fob?

In closing the Tenant feels he is being harassed because the complaints are coming from only one other tenant. Then he commented on how there are two other tenants plus this other one. He stated the police have never come to his house so how can there be police reports. He confirmed that he typed all of the statements he provided from other tenants but that they had written the content and signed them except for the hand written letter because she has moved out.

The Landlord questioned the credibility of his witness statements as one is from a tenant who is being evicted, one is from a tenant who has moved out without paying rent, one is currently involved in a family feud with the other tenant, and one is providing babysitting services for the Tenant. She attempted to obtain the police complaint files however they would not release the information to her as she was not involved. She can state that she herself has made two separate noise complaints about these tenants and was issued police file numbers.

A discussion followed whereby the Landlord offered to mutually agree to end the tenancy March 31, 2011; however the Tenant refused to settle the matter.

Analysis

I have carefully considered the testimony and evidence provided by both parties which included, among other things, letters of support for the Tenant's application, copies of e-mail complaints about noise and the smell of marihuana, letters from the management company, a copy of the final warning letter issued to the Tenant, a copy of the December 16, 2010 dispute resolution decision, and a copy of the 1 Month Notice to End Tenancy dated January 26, 2011.

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant(s) in a manner that complies with the Act.

Section 47 (1) (d) of the Act provides a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The evidence supports the Landlord and strata council have received numerous noise complaints and complaints pertaining to the smell of marihuana. I do not accept the Tenant's testimony that the Landlord was relying solely on evidence which occurred prior to the December 16, 2010 hearing and that the complaints were from one tenant. The complaint e-mails were sent January 9, 2011, January 23, 2011, and January 24, 2011, from four different tenants and the management company's letter is dated February 1, 2011. I further note that the final warning letter was issued January 13, 2011 which primarily relates to events which occurred after December 16, 2010.

I accept that the Tenant received a copy of the final warning letter and what remains at issue is if he received it posted to the door January 13, 2011 or did he receive it for the first time on January 26, 2011. After careful review of the evidence I find, that on a balance of probabilities, the final warning letter was served to the Tenant January 13, 2011, in a manner that is in accordance with section 89 of the Act. It was not until the Landlord received the complaints during the weekend of January 23, 2011, that she issued the Notice to End.

After giving consideration of the aforementioned, the time frames and number of complaints involved since the December 16, 2010 hearing, I find there to be sufficient evidence to support the Landlord had valid reasons for issuing the Notice. Therefore I dismiss the Tenant's request to cancel the Notice and it remains in full force and effect.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant has sought $300.00 for compensation of not receiving a second garage fob. He did not put his request in writing and could not provide a date of when they first requested the second fob. There is no provision in the tenancy agreement which speaks to access to more than one fob therefore I find there to be insufficient evidence to support the Landlord breached the Act, regulation or tenancy agreement, therefore I find the Tenant has not provided sufficient evidence to support his claim for $300.00 and the claim is hereby dismissed.

The remainder of the Tenant's claim pertains to a request for telephone service which has since been resolved. Therefore the remainder of his application is moot.

As the Tenant has not been successful with his application I find he must bear the burden of the filing fee cost.

Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The 1 Month Notice to End Tenancy dated January 26, 2011, is upheld and is in full force and effect. Therefore the tenancy ends February 28, 2011 at 1:00 p.m.

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: February 18, 2011.

Residential Tenancy Branch