



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

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

Introduction

This hearing was convened by way of conference call to deal with the tenants' application for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order permitting the tenants to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The landlord and both tenants attended the conference call hearing and the landlord and tenants both called a witness. The parties and witnesses gave affirmed testimony and the parties were provided with the opportunity to cross examine each other and the witnesses on their testimony.

The landlord provided an evidence package in advance of the hearing to the Residential Tenancy Branch and to the tenants within the time prescribed by the Rules of Evidence, however the tenants' evidence package was not provided within the time prescribed. The landlord opposed the inclusion of the tenants' evidence package, and stated that she would be prejudiced by the inclusion of the evidence. Therefore, the tenants' evidence package is not considered in this Decision. All other evidence and the testimony provided has been reviewed and is considered in this Decision.

During the course of the hearing, the tenants stated that their application for an order that the landlord make repairs to the unit, site or property is withdrawn.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling a notice to end tenancy for cause?

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to an order that the landlord make repairs for health or safety reasons?

Are the tenants entitled to an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began on December 2, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$825.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. On November 27, 2010 the landlord collected a security deposit from the tenants in the amount of \$412.50. The rental unit is a basement suite in a house and the landlord resides in the upper unit.

The landlord testified that on February 18, 2011 she arrived home from work and noticed the house was cold. She also noticed a smell of gas or a strange smell in the bathroom. She called a furnace technician and told him about the smell and that she could not get the heat on. She then sent a text message to the tenants, following up with a phone call stating that she had made the service call, but the female tenant changed the subject speaking about her accountant. The tenant then told the landlord that she was not comfortable with a service technician entering the unit on Saturday when the tenant was not home, but she would allow entry on Sunday. The landlord replied that it was freezing in the house, but the tenant wanted 24 hours notice, so the landlord told the technician to attend at 9:00 a.m. on Sunday. The landlord felt the service call was an emergency repair in that the pipes could have frozen which would have been an expensive repair.

The landlord issued a 1 Month Notice to End Tenancy for Cause on February 25, 2011 and served the notice personally on the female tenant the same day. A copy of the notice was provided by the landlord in advance of the hearing, and it states that the "Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord" and "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The notice contains an expected date of vacancy of February 25, 2011, which was the same date that the notice was issued and served. The landlord testified that the effective date is an error and agreed that it ought to have read March 31, 2011.

When questioned about the illegal activity, the landlord responded that between February 18, 2011 and February 25, 2011 she received text messages from the tenants every day and stated that it is harassment. When questioned about the breach of a material term of the tenancy, the landlord responded that the tenants are permitted to do laundry one day per week, and that the parties had verbally agreed that the laundry day for the tenants would be Sundays each week. On February 19, 2011 the landlord gave the tenants written notice that stated their laundry times would be 6:00 a.m. to 6:00 p.m. on Sundays. She then received a text from the tenants stating that they would comply with the written notice but the landlord was required to give 30 day's notice of a change in a term of the tenancy agreement, and that she would comply 30 days after receiving the notice, and expected compensation. The landlord also testified that the landlord and tenants share the laundry facilities, but the main issue was the tenants' refusal to let the furnace technician in without 24 hours notice.

The female tenant testified that the landlord gave her written notice to allow the furnace technician in, and she complied with the notice. She further testified that the tenants did not get 30 days notice about a change in a material term of the tenancy with respect to the hours she was permitted to do laundry. She had agreed to do laundry on Sundays at the commencement of the tenancy, and agrees that it was a material term of the tenancy, but did not agree to be finished by 6:00 p.m.

The tenant also testified that she called a City inspector who inspected the rental unit and told her it was an illegal suite. One problem noted was the entry into the unit; she stated that the unit has a foyer with a double lock and the tenants only have a key for one and they can be locked into the suite, and that has happened. Also the kitchen door has a lock but the tenants have not been provided with a key and the living room entry door has no lock. The tenants request an order that the landlord provide locks and keys that provide access to and from the unit and prevent the tenants from being locked inside the suite.

She further testified that her 4 ½ year old daughter's bedroom is cold and mouldy in the closet. The child is presently staying at the tenant's mother's home and has been for about a month and a half due to the mould and cold room. She also testified that they can only heat 1 room at a time with a space heater. There are vents in the ceiling but the landlord controls the heat. She sent a text to the landlord about lack of heat when it was snowing, but the landlord did not respond and did not turn up the heat.

After moving in the tenants replaced the ceiling tiles with gyprock in the living room and sanded and painted the whole unit. They also did chlorine treatments for the mould, and found a leak in a pipe which they had fixed. The rental unit is about 1000 or 1100 square feet, and the child's bedroom is about 110 or 120 square feet. The tenants

claim one month of rent or \$825.00 for the loss of the child's bedroom space and the limited laundry hours that were not agreed to at the outset of the tenancy.

The tenants and their witness also testified that the house is always cold and the landlord's music is always loud. On one occasion, the tenants called the police about the loud music. Also, the male tenant testified that the landlord attacked him twice about garbage, which he stated was not their garbage, but he moved it. Also, the tenant's witness testified that the tenants have done laundry at his house on 3 occasions because of the landlord's insistence that laundry be finished by 6:00 p.m. and only on Sundays. He stated that he doesn't know how the tenants can put up with the loud music. When questioned about why the landlord wasn't told about the music or lack of heat, the witness replied that it was not his responsibility as a guest.

The landlord's witness testified that he was called by the landlord when the heat was off, and he advised her that if the pipes freeze it could be a very expensive repair.

The landlord also testified that she was not told about mould, was not asked to replace locks, was not told about lack of heat, and when the tenant asked her to turn up the heat she did so, but did not respond to the text message she received from the tenant. The landlord requests an Order of Possession.

Analysis

Firstly, with respect to the notice to end tenancy, I find that the landlord has failed to establish that the tenants have engaged in any illegal activity. The landlord may have been annoyed with multiple text messages, but that cannot be considered harassment or illegal unless the landlord can prove a criminal element to the text messages. I further find that the landlord changed the material term of the tenancy, being laundry, and has failed to establish that the tenants breached that term. The landlord also testified that the main term was the tenants' refusal to allow the furnace technician into the rental unit. I cannot find that the parties ever considered that to be a material term of the tenancy; I have no evidence to substantiate that. Therefore, the notice to end the tenancy cannot be upheld, and the landlord's request for an Order of Possession is hereby denied.

With respect to the landlord's testimony about emergency repairs, I refer to Section 29 of the *Residential Tenancy Act* which specifies that a landlord must not enter a rental unit for any purpose unless certain circumstances exist, one of which is emergency repairs. If an emergency exists and the entry is necessary to protect life or property, the landlord is not required to provide the tenant with 24 hours written notice.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, I find that the tenants have established that the rental unit does not have sufficient door locks and the tenants do not have sufficient keys allowing them access to and from the rental unit.

I do not find, however, that the tenants have established that the landlord was ever told about lack of heat or mould in the closet of the child's bedroom except perhaps at the commencement of the tenancy. The female tenant testified that she sent a text message to the landlord asking her to turn up the heat and the landlord did not respond and did not turn up the heat. The landlord testified that she did turn up the heat, but did not respond to the text message. It may have been helpful in the circumstances if the landlord had responded, but it would also have been helpful if the tenants had put their concerns in writing to the landlord. Therefore, the tenant's application for compensation cannot succeed on those points; the landlord has the responsibility to maintain the rental unit even if the tenants were aware of a breach by the landlord at the time of entering into the tenancy agreement, but the tenants have an obligation under Section 7 of the *Residential Tenancy Act* to mitigate any loss. I find that the tenants have failed to mitigate the loss by failing to bring those concerns to the attention of the landlord.

The female tenant stated that the application for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided refers to the change in the material term of the tenancy, being laundry hours reduced. The *Residential Tenancy Act* states that:

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

The parties agree that laundry facilities are a material term of the tenancy. Therefore, under the *Act*, the landlord must not terminate or restrict that service. I find in the

circumstances that the landlord has restricted the facilities, and the tenants' application for compensation by reducing rent for repairs, services or facilities agreed upon but not provided has been established, and I find that the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is justified. I further find that the tenants' claim for a rent reduction due to the landlord's restriction of that term is also justified, and I find that \$100.00 is just in the circumstances.

The tenants are also entitled to recovery of the \$50.00 filing fee for the cost of this application, and I order that the tenants be permitted to reduce rent payable for a future month by that amount.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

I further order that the tenants be permitted to reduce the rent payable for one future month by \$150.00.

I further order that the landlord comply with the *Residential Tenancy Act* and the tenancy agreement by removing the restriction of 6:00 a.m. to 6:00 p.m. for laundry facilities. The tenants cannot be held to a restriction of laundry facilities on Sundays.

I further order that the landlord comply with the *Act* by changing the locks to the entry doors of the rental unit, to locks that prevent tenants from being locked in the unit, that prevent entry by persons other than the tenants, and providing the tenants with keys to those locks, and that the lock changes are done at no expense to the tenants. I further order that the landlord comply with this direction by March 31, 2011 and if the landlord fails to do so by that date, the tenants will be permitted to reduce future rental payments by \$100.00 per month, commencing with April, 2011 for each month that this direction has not been complied with.

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: March 16, 2011.

Residential Tenancy Branch