

DECISION

Dispute Codes: CNC, MNDC

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for cause. The tenant also applied for compensation for loss under the *Act* or tenancy agreement. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to compensation?

Background and Evidence

The tenancy began on December 01, 2010. The rental unit consists of a five bedroom home. The landlord rents the house from the owner and has written permission from the owner to sublet and manage subtenants. The landlord stated that he has managed this rental unit with subtenants for two years without any problems. Each subtenant rents a bedroom. The kitchen, washroom and common areas are shared by all.

The landlord stated that he and the subtenants get along well and enjoy each others' company. They live together as a family and share meals. However, this changed in December 2010, when the tenant moved in. In the four months prior to December 01, 2010, the police visited the rental unit twice. Both visits occurred on the same night and were the result of a noise complaint. The landlord stated that the noise was generated by the subtenants enjoying a farewell party for one of the subtenants.

The landlord stated that since the tenant LRH moved in there have been numerous visits by the police due to frivolous calls by LRH to 911. The landlord stated that the tenant is disruptive and difficult to deal with largely due to the difference in age and lifestyle. The problems started right away and got steadily worse with time. The tenant stated that major incidents which included vandalism, verbal abuse and yelling occurred on or about mid January, February 18 and March 12, 14, 18 and 26.

The landlord stated that on March 12, 2011, the tenant and one of the subtenants JCB got into an argument which resulted in the tenant's boots, sandals and make up being thrown outside on the lawn.

The tenant called the police who spoke with each of the parties. The landlord also spoke to both parties and the tenant verbally agreed to look for other accommodation and to move out within six weeks.

The situation got progressively worse and the tenant called police on March 14, 18 and 26. The police report states that the tenant is having difficulty with her roommates. The tenant told police that the other tenants had damaged her computer and moved her belongings including footwear, without consulting her. She also alleged that they threatened to throw her clothes out on the lawn. The police report states that this issue was discussed with JCB and he was told that his behavior was immature and inappropriate. The constable also explained to tenant LRH that these matters were tenancy related and not police matters.

On March 15, 2011, the tenant handed a letter to the landlord regarding the living situation, suspected vandalism of her possession and constant harassment over her computer use which resulted in incidents in January, February 18 and March 11, 12 and 13. The letter is written by the tenant's advocate and requests the landlord to evict JCB.

LRH filed a copy of a letter dated March 18, 2011 to the landlord and the owners. The letter states " *There are many qualities I like about the men I live with including JCB and it is the shock of having my personal and property rights violated that creates extreme duress, causing delays in my capacity to seek out more appropriate housing*".

The landlord stated that due to the behavior of the tenant, the other tenants have informed him that they are unable to continue sharing the rental unit with LRH. One of the tenants, SJ gave the landlord written notice to end his tenancy due to the disturbances caused by the tenant and the repeated visits from the police. The letter states "*If LRH agrees to move out, I would be more than happy to continue living here with the original tenants and to disregard this notice. I regret doing this, but no longer feel comfortable at home*".

The landlord stated that due to the problems between the LRH and the other tenants, the quiet enjoyment of all occupants is affected. The landlord himself spends minimal time at the home for this reason. He stated that since LRH moved in, he spends most of his time at his girlfriend's home. In a conversation with LRH, he advised her that if he is unable to continue living at the rental unit, and he moves out, all the occupants have to move out too as he will be required to hand over vacant possession to the owner.

The landlord stated that after this conversation with LRH, she accused him of threatening her with eviction. The landlord stated that the other occupants are good tenants and that if he loses them, he will not be in a position to pay rent to the owner.

SJ testified that since LRH moved into the unit, the police have attended several times at her request. He stated that she has no cause to call for police assistance and the police visits are distracting and compromising to his reputation.

LRH testified that she did call for police assistance when the tenants were partying till 5 a.m., when they moved her empty boxes and then destroyed them without her permission, when her computer broke down, when her shoes went missing and when the other tenants yelled or swore at her. The tenant alleged that JCB caused the failure of her computer by turning the power supply on and off several times. During the hearing, LRH complained about how the tenants do not pick up after themselves and do not keep the rental unit clean.

The landlord stated that he spoke with JCB regarding the breakdown of the tenant's computer and JCB denied all allegations. The landlord stated that the home is older and the power supply trips on a regular basis.

On March 20, 2011 the landlord served the tenant with a one month notice to end tenancy for cause. The reason for the notice is that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord.

Analysis:

In order to support the notice to end tenancy, the landlord must prove that the tenant has significantly interfered with or disturbed the landlord or another occupant.

Based on the documentary evidence and the verbal testimony of both parties, I find that in the months prior to December 2010, the landlord and the subtenants lived in harmony with each other and had only one noise complaint. Since the tenant moved into the unit, there have been arguments and problems that have resulted in all of the other subtenants wanting to move out. Based on the letter written by one of the other subtenants and his verbal testimony, I find that he served the landlord with a notice to end tenancy because of the problems created by multiple police visits to the unit for non police matters and would continue to stay if the tenant moved out. I also find that the landlord himself will have to end the tenancy if his subtenants move out because he will not be able to afford the rent. In addition, the landlord also stated that he spends minimal time in the unit because of the above mentioned problems.

On a balance of probabilities, I find that it is more likely than not that the tenant has significantly disturbed the landlord and the other occupants of the home, by calling and making complaints to the police multiple times for matters that are not police matters. Therefore the landlord has proven that the tenant has significantly interfered with and unreasonably disturbed the other occupants and the landlord. Accordingly, the notice to end tenancy is upheld and the tenant must move out by the effective date of the notice.

The tenant stated that one of her boots went missing and the landlord confirmed that it had. The tenant stated that the boots were a year old and provided a quotation for replacement in the amount of \$72.80. The landlord stated that the boots were ordinary gum boots and definitely not worth \$72.80. The tenant did not provide any information by way of photographs to verify that the replacement pair of boots that she is claiming for is similar to the one that went missing. Based on the testimony of both parties, I find that one of the boots is missing. However, there is insufficient evidence to determine the cost of replacement. *Residential Tenancy Policy Guideline #16* states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I award the tenant a minimal award of \$25.00.

The tenant has also claimed \$39.18 to replace her keyboard and mouse and \$4,558.40 to repair her computer. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. In this case LRH has not proven that her computer was damaged by the actions of JCB. Accordingly, the tenant’s claim for the replacement of the keyboard and mouse and for the repair of the computer is dismissed.

Conclusion

The notice to end tenancy is upheld and the tenancy must end. I award the tenant a monetary order of \$25.00 and the remainder of the tenant’s application for a monetary order is dismissed.

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: April 19, 2011.

Residential Tenancy Branch

