



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LAT, RR, FF

Introduction

This hearing dealt with the Tenant's application to cancel a Notice to End Tenancy for Cause, for a Monetary Order for damage or loss under the *Residential Tenancy Act* (the "Act"), regulations or tenancy agreement; and for Orders for compliance, suspending or setting conditions on the Landlord's right to enter the rental unit, authorization to reduce rent and to change the locks and to recover the filing fee.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

On a procedural matter, I note that both Landlords, in particular the male Landlord, continually interrupted the hearing, despite repeated warnings. The male Landlord was very confrontational throughout the hearing.

Issue(s) to be Decided

1. Is there a basis to cancel the Notice to End Tenancy for Cause?
2. Is it necessary to issue Orders to the Landlords for compliance, to suspend or set conditions on the Landlords' right to enter the rental unit and authority to change the locks?
3. Is the Tenant entitled to reduce rent payable?

Background and Evidence

Although the parties stated that there was a written tenancy agreement, it was not provided into evidence. I heard testimony that this month to month tenancy began on April 1, 2011, monthly rent is \$700.00, including \$50.00 for utilities and the Tenant paid a security deposit of \$1,100.00. The female Landlord stated this amount comprised the first month's rent of \$700.00, the last month's rent of \$700.00, and a security deposit of \$400.00, for a total of \$1,800.00.

The Tenant stated there is no written move-in condition inspection report and the male Landlord stated there is one, but that he forgot to give it to the Residential Tenancy Branch.

Pursuant to the Residential Tenancy Branch rules of procedure, the Landlords proceeded first in the hearing and testified as to why the Tenant had been served a 1 Month Notice to End Tenancy for Cause.

The Landlord issued a 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on May 14, 2011, via personal delivery, with a stated effective vacancy date of June 30, 2011. The causes as stated on the Notice alleged that the Tenant seriously jeopardized the health and safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

In support of the Notice, the Landlord testified that the Tenant has broken into the adjoining rental unit in the duplex and left garbage about the premises. Additionally the Landlords allege that the Tenant has bedbugs in her rental unit, due to the Tenant's lack of cleaning.

Upon query, the Landlord admitted going through the Tenant's garbage to locate the bedbugs and had no professional verification confirming bedbugs.

The Landlord's evidence included copies of photos of bags of garbage, which appeared hazy, and a copy of the Notice.

In response, the Tenant stated that on April 27, 2011, the female Landlord visited her in the rental unit to visit the Tenant and her three month old daughter, at which time she disclosed the financial and personal problems of the Landlords.

The Tenant submitted that the Landlord asked her to mutually agree to end the tenancy so that the duplex could be put on the market for sale. The Tenant did not agree and shortly thereafter, the Landlord again asked the Tenant to vacate, as she, the Landlord, had secured tenants who wanted to rent the entire house for \$2,200.00. According to the Tenant, she once again refused, saying she needed a place to live with her infant daughter. The Tenant submitted that her refusal to leave when the Landlords had "double rented" the house caused desperation to the Landlord, which led to the issuance of the Notice when no cause existed

The Tenant denied creating the garbage around the premises and stated that she keeps the premises clean.

As to the bedbugs, the Tenant stated that she ordered new furniture, which was not delivered until after she returned from another province. After the furniture was delivered, the Tenant discovered an insect, later determined to be a bedbug by an exterminator, crawling on her infant. The Tenant then notified the Landlords, requesting a full extermination, but the Landlords have refused.

The Tenant stated that she was promised and did have use of the laundry, which was located in the adjoining suite, two times a week. According to the Tenant, shortly after the adjoining tenants moved into the other half of the duplex, her laundry access has

been terminated, causing her to incur expenses at an off premises laundry. The Tenant testified that this has created a hardship for her as she is a single mother and does not have a vehicle.

The Tenant testified that she has had difficulties with the heating system and was without heat for 3-4 days. The Tenant further stated that she now has a separate heat control for the bedroom, but has no heat in her living room.

The Tenant submitted that she has had an indication that the Landlords have entered her rental unit without her knowing and without her permission, as she noticed her inside door was locked. The Tenant stated that the male Landlord has opened her door, without permission, has repeatedly called her offensive names, such as "idiot" and "stupid," as well as repeatedly ringing her door bell.

Upon query, the Tenant submitted that she had not paid rent for the month of June 2011, upon advice from the Residential Tenancy Branch.

In response, I heard testimony that the male Landlord agreed to laundry access to only one day a week, but that the female Landlord agreed to two days a week access due to the Tenant having an infant daughter.

The female Landlord said that laundry access is not a problem because all the Tenant would have to do is ask the adjoining tenants for permission to do laundry.

The male Landlord stated that he did not understand why the Tenant would not answer the door, as he would "ring and ring and ring" the doorbell. When questioned, the male Landlord retracted this statement, saying he just rang the doorbell "once or twice, maybe three times."

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have given careful consideration of all oral and written evidence before me; however, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Where a Notice to End Tenancy is disputed, the Landlords had the burden to prove that the tenancy should end for the reasons indicated on the Notice, which is that the Tenant seriously jeopardized the health and safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk. I have considered the submissions of both parties in determining whether the tenancy should end for the stated reasons.

I **grant** the Tenant's application and set aside the 1 Month Notice to End Tenancy for Cause dated May 14, 2011.

I find that the Landlords have not presented sufficient evidence to demonstrate that the Tenant significantly interfered with or unreasonably disturbed another occupant or the Landlord or put the Landlords' property at significant risk. In reaching this conclusion, I was persuaded by the lack of evidence submitted by the Landlord, which consisted of hazy copies of photos which consisted of depictions of a box of items and a bag of garbage at some unknown location. Another copy of a photo depicted a written message, allegedly posted on the Tenant's door referencing a "mess;" however the Landlords did not substantiate or prove that any item in the photo belonged to the Tenant or who wrote the note. Rather, I am persuaded by the Tenant's testimony that the Landlord posted the message, rang the doorbell and ran away.

I find the Landlords' evidence and testimony lacked credibility and consisted of unfounded and unsubstantiated allegations. For instance, the male Landlord initially testified that he rang the door bell continually, but changed this testimony when questioned.

I find that on a balance of probabilities the Landlords issued the Notice seeking to end the tenancy in order to receive substantially more rent from the adjoining tenants in the duplex and that the adjoining tenants were advised that they could rent the entire house once the Tenant had been evicted.

Based upon a preponderance of evidence, I find the allegations in the Notice to be untrue and unsubstantiated.

Therefore, I find the Landlords have not proven the causes as alleged in the Notice and **I order that the 1 Month Notice to End Tenancy for Cause issued by the Landlords on May 14, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues.

As to the Tenant's request for a monetary order equal to one month's rent, Residential Tenancy Branch Policy Guideline #29 (Security Deposits) states:

"The Residential Tenancy Act permits a landlord to collect a security deposit.... The Act contains a definition of "security deposit," which also contains exclusions. As a result of the definition of a security deposit in the RTA and the regulations, the following payments by a tenant, or monies received by a landlord, irrespective of any agreement between a landlord or a tenant would be, in form part of, a security deposit:

- *The last month's rent*
- *.....*

The RTA requires that a security deposit must not exceed one-half of one month's rent. If one or more of the above payments, together with other monies paid, exceed one-half of one month's rent then the remedies afforded by the Act would be available to a

tenant. In addition, the Act provides that a landlord who contravenes these provisions commits an offence and is liable, on conviction, to a fine of not more than \$5,000.00."

I therefore find that the Landlords are in direct contravention of the Act and policy guideline by collecting from the Tenant more than one-half of one month's rent, **or \$350.00**, at the beginning of the tenancy and holding this amount for the end of the tenancy. At the very least, the Landlords collected rent not yet due, which is also in direct contravention of the Act.

I find that the Landlord collected **\$1,100.00** as a security deposit at the beginning of the tenancy and but was entitled to collect only \$350.00 (1/2 of \$700.00 monthly rent). I therefore find the Tenant has established a **monetary claim** of **\$750.00**, \$700.00 of which has been satisfied by the Tenant's withholding of rent for June 2011, as allowed under section 19 of the Act. The Tenant is directed to withhold the remaining \$50.00 from the July 2011, rent payment, in satisfaction of the monetary claim.

I direct the Landlords to consider the June 2011, rent paid in full.

As to the issue of lack of laundry facilities, in dealing with an agreed upon service, the onus is on the Landlord to prove material terms. The Landlord did not submit or establish that a written tenancy agreement existed, as required under Section 13 of the Act, and therefore is unable to prove that laundry facility access two times a week was not a material term of the tenancy agreement. I find that with the contradiction in testimony between the male and female Landlord, the Tenant's evidence is sufficient. I therefore, **find** as follows:

1. Use of laundry facilities under Section 1 of the *Residential Tenancy Act* is a material term of the tenancy agreement, which I find the Landlords agreed to provide as part of monthly rent.

I find the Tenant met her burden of proof and submitted sufficient evidence to prove that the Landlords have terminated an agreed upon service by denying access to the laundry room.

I therefore **order** the Landlords to restore or continue to provide the agreed upon laundry facility, effective immediately, two days per week. If the parties cannot otherwise agree, the Tenant will be allowed access on Sundays and Wednesdays of each week, at reasonable hours. If the parties are unable to define reasonable, the hours will be between 9:00 a.m. and 6:00 p.m.

As the Tenant has been deprived of laundry facilities, I find the Tenant was required to pay for the use of an off premises laundry. I therefore find that the Tenant has established a **monetary claim** in the amount of **\$67.20**, as provided in her evidence. The Tenant is directed to deduct this amount from the July 2011 monthly rent.

As to the Tenant's request to suspend or set conditions on the Landlords' right to enter the rental unit, I direct the Landlords to comply with Section 29 of the Act, and give the Tenant at least 24 hours written notice that includes the purpose of entering, which must be reasonable and the date and the time of the entry, which must be between 8:00 a.m. and 9:00 p.m. Upon the Landlords' failure to comply with section 29, the Tenant is at liberty to make further application for dispute resolution for an order for a rent reduction for loss of quiet enjoyment.

As to the Tenant's request for authority to change the locks, I do not find that the Tenant has sufficiently proven that the Landlords entered the rental unit; therefore I **dismiss** her claim for authority to change the locks.

The Landlords are **ordered** to adhere to the terms of the Act, when seeking access to the unit, particularly as it pertains to continually ringing the Tenant's doorbell, and for other dealings with the tenancy, failing which the Tenant is at liberty to file an Application seeking further monetary compensation for devaluation of the tenancy and loss of quiet enjoyment.

As there were several instances of the Landlords' breach of the Act and policy guidelines, I have included a guidebook to the Act for the Landlords to use as a reference.

I find that the Tenant has succeeded in her Application and that she should recover the filing fee from the Landlord.

In total, the Tenant has established a **monetary claim** in the amount of **\$167.20**, which includes the balance remaining of the security deposit overpayment in the amount of \$50.00, the Tenant's use of an off premises laundry facility for \$67.20 and the filing fee of \$50.00.

I direct that the Tenant deduct **\$167.20** from the July 2011, payment of rent in satisfaction of the claim. In the event this tenancy ends before the Tenant is able to deduct this amount, I have granted the Tenant a monetary order in the amount of \$167.20.

This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's rent for June 2011 is paid in full by virtue of the Landlords' collecting the last month's rent at the start of the tenancy.

The Tenant is granted a monetary order for \$167.20.

The Tenant is allowed to satisfy the monetary order by deducting this amount from a future monthly rent payment as described above.

The Landlords are directed to restore or continue to provide the agreed upon laundry facility, effective immediately, two days per week, as directed above.

The Landlords are directed to comply with Section 29 of the Act, and give the Tenant at least 24 hours written notice that includes the purpose of entering, which must be reasonable and the date and the time of the entry, which must be between 8:00 a.m. and 9:00 p.m.

I order the Landlords to comply with the Act in dealings with the Tenant and direct that the Tenant be given quiet enjoyment of the rental unit and premises.

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: June 07, 2011.

Residential Tenancy Branch