



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, ERP, RP, PSF, LRE, LAT, RR, OPC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order, an order that the landlord perform repairs and provide services, an order permitting the tenant to reduce rent until repairs are completed and an order permitting the tenant to change the locks on the rental unit and restricting the landlords' access to the rental unit. The landlord filed a cross-application for an order of possession. Both parties participated in the conference call hearing.

The tenant has filed an action against the landlord in the Supreme Court seeking the monetary relief for the same issues raised in this application. At the hearing I advised the tenant that I was dismissing his monetary claim pursuant to section 58(2)(c) of the Act as I found that it was substantially linked to a matter that is before the Supreme Court. The hearing proceeded to address the remaining claims.

Issues to be Decided

Should the notice to end tenancy be set aside?
Should the landlord be ordered to perform repairs or provide services?
Should the tenant be permitted to change locks?
Should the landlord's access to the unit be restricted?

Background and Evidence

The parties agreed that on August 17, the tenant was served with a one month notice to end tenancy for cause. The notice alleges that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health or safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and 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.

The rental unit is located on the lower floor of property in which the upper floor is occupied by other tenants under a separate tenancy agreement.

The landlord listed a number of complaints he had about the tenant. He acknowledged that the tenant had complained that the occupant of the upper unit was abusing his children and asked the landlord to act upon that information. The landlord argued that he was unable to act on that information as he had no firsthand knowledge of the alleged incidents. He testified that the tenant called him at 1:30 a.m. to complain that the occupants of the upper unit were doing laundry, telephoned him and threatened to sue him when the landlord had dinner guests and on another occasion complained that the occupant of the upper unit was drunk. The landlord testified that the occupant in the upper unit had complained that the tenant was drunk.

The landlord testified that both the tenant and the occupant of the upper unit have repeatedly summoned the police to the rental unit. The landlord stated that he attended at the police department in an attempt to obtain a police report so he could determine who was at fault in the dispute between the upper occupant and the tenant and the police would not give him information enabling him to determine fault, so he was unable to evict the occupant of the upper unit as he had no evidence that he had done anything wrong.

The landlord testified that the tenant continually complains about the occupant of the upper unit but that the occupant of the upper unit never complains about the tenant. Given the number of times that police have been summoned to the rental unit, the landlord fears for the safety of the occupants of the upper unit.

The landlord recounted an occasion in which the tenant reported a fire alarm malfunction to the fire department, resulting in the fire chief issuing an order that the landlord connect the fire alarms of the upper and lower units. The landlord testified that he hired an electrician to make the repair, but the tenant would not grant the electrician entry, demanding that repairs only be performed during certain hours.

The landlord complained that the tenant had disposed of the landlord's washer and dryer without consent and replaced other items in the unit without consent, including installing a dishwasher.

The landlord also alleged that when he attended at the rental unit to serve the notice to end tenancy, the tenant slammed the door in his face, only to open it a few minutes later.

The tenant acknowledged that he had telephoned the landlord at night to complain that the occupants of the upper unit were doing laundry, but testified that the call was made at 12:30 a.m. The tenant claimed that the occupant in the upper unit has assaulted him on one occasion and smashed his window with a baseball bat and he expressed frustration that the landlord refused to evict that occupant. The tenant is of the opinion that the landlord is preserving the other occupant's tenancy because he pays more rent than the tenant.

The tenant claimed that the landlord had not told the tenant he had hired an electrician, but rather claimed that he was doing the work himself. He stated that the landlord had to have a permit to do electrical work and he had learned from city hall that no electrical permit had been issued, so he believed the landlord did not have the right to perform the work.

The tenant denied having slammed the door in the landlord's face and testified that the landlord had arrived when he had just exited the shower, so he answered the door in a towel and shut the door briefly to permit him time to put on clothing.

With respect to the request for repairs and the claim for a rent reduction until repairs are completed, the tenant testified that the only outstanding repair issue is his gas stove which he testified he has been unable to use since it was installed by the landlord in February 2011. The tenant testified that because the stove was not installed by a certified gasfitter, when he turned the stove on and detected an unusual odour, he immediately turned the stove off and has not used it since. The tenant testified that natural gas hook-ups were being inspected in the coming week and indicated that he believed a repair order was no longer necessary in light of the coming inspection. The tenant indicated that he felt he was entitled to a reduction in rent as he had not been able to use the stove for half a year. The landlord testified that had he known there was a problem with the stove, he would have immediately had it repaired as it was under warranty.

The tenant testified that because of the landlord's recent actions and unwillingness to evict the occupant of the upper unit, his trust in the landlord had decreased and he therefore wanted to change the locks on the rental unit and limit the landlord's right to access the unit.

Analysis

The landlord bears the burden of proving that he has grounds to end the tenancy. While I can appreciate that the landlord has found the tenant's repeated complaints annoying and that he suspects that the tenants' actions warranted the involvement of

the police, I am unable to find that the tenant has committed what is alleged in the notice to end tenancy. The relationship between the tenant and the occupant of the upper unit is clearly strained and may be causing the tenant to lose quiet enjoyment of the rental unit (and I make no finding on that issue). The landlord has to expect that when his tenant believes he is losing quiet enjoyment, he will contact the landlord to seek a remedy to the situation. I find that the repeated complaints made to the landlord by the tenant cannot form grounds to end the tenancy. Only one of those complaints appears to have been made at an unreasonable hour and there is no suggestion that late telephone calls to the landlord are a pattern.

While the tenant may have installed a dishwasher and replaced the washer and dryer without specific consent from the landlord, I find that the incidents happened early in the tenancy and the landlord was aware at the time of the installations that they were occurring and he chose not to take action. I find that the landlord acquiesced to the installations and cannot now use this incident as a ground to end the tenancy.

I accept that the tenant may have shut the door with some force when the landlord attended at the rental unit to serve the notice to end tenancy, but I find his explanation for shutting the door to be reasonable and I note that while the action may have been rude, no injury resulted.

I accept that the tenant denied entry to the landlord to repair the fire alarm but I am not persuaded that the landlord had given 24 hours written notice of entry prior to his entry. While the tenant may be attempting to impose unreasonable times in which he will permit the landlord to perform repairs, I find that the landlord has not asserted his right to enter after 24 hours written notice regardless of whether the tenant agrees and I am not satisfied that the tenant has ever denied entry after having been given written notice.

I find that the landlord has not provided sufficient evidence to prove that he has grounds to end the tenancy and I order that the notice to end tenancy dated August 17, 2011 be set aside and of no force or effect. As a result, the tenancy will continue. The landlords' claim for an order of possession is dismissed.

The tenant's claim for an order compelling the landlord to repair the stove is dismissed with leave to reapply in the event that repairs are not completed after the inspection is performed in the coming week.

An order permitting a tenant to change the locks on the rental unit or limiting the landlord's right to access the unit will only be granted where it has been proven that the landlord refuses to comply with the law regarding entering the rental unit, found in

sections 29 of the Act. I find insufficient evidence to show that the landlord has illegally entered the unit and I dismiss the tenant's claim for these orders.

I also dismiss with leave to reapply the tenant's claim for an order that the landlord provide services as at the hearing, he indicated that he made that claim with respect to the faulty stove.

In order to establish his claim for an order permitting him to reduce his rent until the stove is repaired, the tenant must prove that he advised the landlord that a repair was required and gave the landlord opportunity to perform the repair. I find insufficient evidence to persuade me that the tenant reported the problem with the stove to the landlord and accordingly I dismiss the claim.

Conclusion

The notice to end tenancy is set aside. The tenant's claim for a monetary order is dismissed as it is substantially linked to a matter which is before the Supreme Court. The claim for orders that the landlord perform repairs and provide services and permitting the tenant to reduce rent until repairs are completed are dismissed with leave to reapply. The claim for an order permitting the tenant to change the locks on the rental unit and restricting the landlords' access to the rental unit is dismissed.

The landlord's claim is dismissed in its entirety.

As the tenant has been successful in part of his claim, I find that he should recover \$25.00, which is one half of the filing fee paid to bring his application. The tenant may deduct this sum from future rent payable to the landlord.

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: September 23, 2011

Residential Tenancy Branch