

## DECISION

Dispute Codes      CNC, MNDC, AAT, LAT, RR, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord confirmed that he received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on August 25, 2011. I am satisfied that the tenant served this package to the landlord in accordance with the *Act*.

At the commencement of the hearing, the landlord said that he realized that typed notices to end tenancy he had issued to the tenant during August 2011 were not on the approved Residential Tenancy Branch (RTB) forms. For that reason, he said that he was not attempting to obtain an end to this tenancy on the basis of the August 2011 letters he had issued to the tenant. He said that he had issued a subsequent 1 Month Notice to End Tenancy for Cause (1 Month Notice) on the correct RTB form on September 8, 2011.

Since the landlord was not seeking an end to this tenancy on the basis of his August 2011 typed letter(s) to the tenant, I advised the parties that I was allowing the tenant's application to cancel the landlord's 1 Month Notice(s) issued in August 2011. The effect of this decision is that this tenancy continues. I advised the parties that this decision does not affect the landlord's 1 Month Notice issued on September 8, 2011. I informed the parties that if the tenant disputes the 1 Month Notice issued on September 8, 2011, the tenant needs to file a separate application for dispute resolution with the RTB within the time frames specified on that Notice.

The landlord also said that he had not received all of the tenant's written evidence. In reviewing the material that he alleged was missing, it became apparent that this material related solely to the tenant's dispute of the notice to end tenancy. Since the landlord was no longer seeking an end to this tenancy on the basis of the letters sent to the tenant in August 2011, I found that there was no need to adjourn the hearing to exchange evidence that had no bearing on the remainder of the tenant's application for dispute resolution.

The parties also agreed that there were two tenants listed on the residential tenancy agreement. Although the other tenant has not applied for dispute resolution, I advised the parties that I was prepared to hear the tenant's application for a monetary award and for orders against the landlord.

At the commencement of the hearing, the tenant reduced the amount of her requested monetary award from \$1,550.00 to \$1,050.00. She amended her application because she had learned after she submitted her application for dispute resolution that she could not obtain \$500.00 from her pet damage deposit until her tenancy ends.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary Order for compensation for losses arising out of this tenancy? Should an order be issued to the landlord to install a proper locking mechanism on the tenant's sliding patio door? Should the tenant be allowed to reduce her rent for loss of quiet enjoyment of the rental unit and for services or facilities agreed upon but not provided by the landlord? Is the tenant entitled to recover her filing fee from the landlord?

#### Background and Evidence

This fixed term tenancy commencing on May 1, 2011 is scheduled to end on April 30, 2012. Monthly rent for the tenancy is set at \$1,000.00, payable in advance on the first of each month. The tenant who applied for dispute resolution pays half of this monthly rent. The landlord continues to hold the tenants' security deposit of \$500.00 and pet damage deposit of \$500.00 paid on April 21, 2011.

The parties provided conflicting evidence regarding renovations that the landlord has undertaken at the rear of the rental unit to install a 10 foot by 12 foot wood deck without stairs or railings.

The tenant testified that these repairs commenced in June 2011 and are ongoing. She provided photographs which she dated to support her claim that the renovations have

taken far too long and have led to garbage and construction equipment including a loader to be on the premises for much of this time. She testified that the landlord works on this project on an irregular schedule and at a haphazard pace. She said he has not taken steps to finish this work and clean up the mess caused by the construction. She maintained that this work has led to her loss of quiet enjoyment of her rental premises as she has been prevented from using her backyard during the summer months. She also maintained that she has lost her right to privacy as a result of this work.

The tenant applied for a monetary award of \$500.00 for her loss of full use of her rental property from June until the time of her application. She also applied for a monetary award of \$500.00 for the invasion of her privacy "and repeated stress and disturbance from the landlord."

The tenant's witness testified that when he visited the rental property on June 20, 2011, construction on the deck at the rear of the rental unit had commenced. He testified that the deck was completed by August 27, 2011. He said that some of the construction material and supplies remained in the tenant's backyard. The tenant's witness stated that he found the landlord in the rental unit on September 1, 2011 conducting an inspection of the rental premises.

The landlord testified that construction on the deck began on July 25, 2011 and ended on August 13, 2011. He questioned the dates of the photographs submitted by the tenant. He also said that on August 17, 2011 and August 31, 2011 he provided written notices to conduct inspections of the rental unit at specified times the following day. The first appointment to inspect the premises was cancelled due to sickness. However, he said that he entered the premises at the set time on September 1, 2011 to conduct the inspection when no one answered his knocks on the door that day. He confirmed that he left the rental unit when the witness attended the property.

I also heard conflicting evidence regarding the security provided by the locking mechanism on the tenant's sliding patio door. The tenant entered into evidence a photograph of the locking mechanism and testified that this mechanism was inadequate to provide security for the rental unit. She said that part of the mechanism does not work and as a result the sliding door is insecure. The landlord said that the photograph is misleading as the latch fits into a slot which provides adequate security for the rental unit. He said that it is the same locking mechanism that has been in place since 1999. He said that the mechanism has remained in the same state for the past four years and provides adequate security.

Analysis

I cancel the landlord's typed notices to end tenancy issued in August 2011 with the effect that this tenancy continues.

Based on a balance of probabilities, I find that the oral evidence provided by the tenant's witness was the most convincing regarding the delay in completing the renovations to the deck and backyard of the tenants' rental premises. Based on his evidence, this renovation took at least 9 ½ weeks to complete. This evidence was supported in part by the tenant's oral and photographic evidence. Other than the landlord's oral testimony, he did not provide any supporting evidence either through witnesses or documents to lend credibility to his claim that the work on the deck was conducted from July 25, 2011 to August 13, 2011. However, I do accept the landlord's estimate that it would normally take approximately 2 ½ weeks to complete this project. As such, I find that the tenant lost quiet enjoyment of this portion of her rental premises for approximately 7 weeks during the summer of 2011.

Section 28 of the *Act* protects a tenant's right to quiet enjoyment of the rental premises. While I accept that the tenant lost access to this portion of the backyard of the rental unit for some of the summer, the landlord is also entitled to renovate the property to provide more enjoyable facilities to his tenants.

Use and access to a backyard is somewhat seasonal in that it is a more attractive feature of a tenancy in the summer months than in the winter. Neither party has provided any evidence to assist in quantifying the amount of loss that the tenant experienced during the renovations.

Based on my review of the photographs and the evidence presented, I find that it would be reasonable over the summer months to assume that 10 % of the monthly rent paid by the tenants was for use of the backyard free of construction and construction equipment. In coming to this determination, I note that the tenant had at least some access to portions of the backyard over this period, although this access was not the total access that she expected to receive over the summer months. Since the period of rent reduction applied to a seven- week period (49 days), I find that the tenant is entitled to a monetary award from the landlord to allow her to recover her half of her loss of quiet enjoyment and facilities the landlord committed to provide over this period. As there are 62 days in July and August 2011, the amount of rent payable for this tenancy over the period of rent reduction is \$1,580.00 ( $49/62 \times \$1,000.00 \times 2$  months). I find that the rent reduction for the tenant's loss of quiet enjoyment and loss of facilities over that period is her half of 10% of the \$1,580.00 payable for this tenancy over the period of

eligibility for rent reduction. I find that this results in a monetary award in the tenant's favour of \$79.00 ( $50\% \times 1,580 \times 10\% = \$79.00$ ).

I dismiss the remainder of the tenant's claim for a monetary award as I find that she has not demonstrated to the extent necessary that she is entitled to a monetary award for the alleged loss of privacy resulting from the landlord's access to her rental unit. The tenant did not dispute the landlord's claim that he issued written notices of his intention to inspect the rental premises. I find that the oral and written evidence submitted does not support the issuance of a monetary award in this regard.

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed a means of resolving their disagreement regarding the locking mechanism on the tenants' sliding patio door and achieved a resolution of their dispute regarding this aspect of the tenant's application.

The parties agreed that within a week of the hearing the landlord will purchase a security bar from a retailer for use in the sliding patio door. The parties agreed that this security bar will remain with the rental unit at the end of this tenancy for use by the next tenants as a means of ensuring security.

As the tenant was partially successful in her application for dispute resolution, I allow her to recover her \$50.00 filing fee for her application from the landlord.

### Conclusion

I allow the tenant's application to cancel notices to end tenancy issued by the landlord in August 2011, with the effect that this tenancy continues.

I issue a monetary award in the tenant's favour in the amount of \$129.00 for a reduction in rent and for recovery of her filing fee for this application.

The tenant is provided with these Orders in the above terms and the landlord must be served with a copy of these Orders as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

In order to give effect to the parties' agreement on the issue of the locking mechanism on the tenant's sliding patio door, I order the landlord to purchase a security bar from a

retailer and install it in the tenant's sliding patio door before September 20, 2011. I order that this security bar will remain in the rental unit after this tenancy ends.

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*.