Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

INTERIM DECISION

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

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order, an order compelling the landlord to comply with the Act and perform repairs, an order authorizing the tenants to padlock a gate, an order limiting the landlord's access to the rental unit and an order permitting the tenants to reduce their rent. Both parties participated in the conference call hearing.

The hearing proceeded for 105 minutes until the time allotted for the hearing had expired. At the end of that time, the tenants had not finished presenting their evidence in support of their monetary claim and the landlord had not had an opportunity to respond to that claim. I advised the parties that I would issue an interim decision addressing all of the claims save the monetary claim, which would be heard when the hearing was reconvened.

Issues to be Decided

Should the notice to end tenancy be set aside?
Should the landlord be compelled to perform repairs?
Should the tenants be authorized to change the locks to the rental unit?
Should the landlord's access to the rental unit be restricted?
Should the tenants be permitted to reduce their rent?

Background and Evidence

The landlord testified that she served the tenants with a one month notice to end tenancy on September 17, 2011 by leaving the notice in the tenants' mailbox. The tenants first testified that they received the notice on September 17 and when I asked them why they delayed in disputing the notice, advised that they were under the understanding that if the notice was served in the mailbox, they had 13 days to dispute it rather than 10 days. The tenants then corrected themselves and stated that they probably didn't receive the notice until September 19 or 20.

The notice alleges that the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord, have seriously jeopardized the health or safety or lawful right of the landlord and that the tenants have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenants have repeatedly interfered with her right to inspect the rental unit by denying her access. She stated that she gave the tenants written notice in august and they denied her entry because they claimed that a property inspection is not a valid reason for entry. On September 2 she gave written notice to the tenants advising that she would be entering the unit on September 10 at 5:30 for the purpose of inspection. The tenants wrote back and advised that this time didn't work for them because they would be eating and asked her to set another time and to arrive without a witness. The landlord responded that she would attend at the time stated on the September 2 notice. The landlord attended the unit at 5:30 and the tenants refused her entry. On September 17 she gave the tenants notice of entry for September 24. She arrived at the unit with a police escort. The tenants had padlocked the gate, but unlocked the gate and permitted the police to inspect the unit and the landlord to enter briefly. The landlord's witness was not permitted to enter. The landlord testified that because the tenants have been verbally aggressive, she wanted a witness present when she had any interaction with them. The landlord stated that in addition to being permitted to inspect the unit monthly under the *Residential Tenancy Act*, city bylaws required to inspect the rental unit at least once every three months or be liable for a fine of at least $2,500.00.

The tenants testified that they denied access to the landlord because she brought a witness, because she scheduled one inspection at a time when they were eating dinner and another inspection at a time when only one of the tenants could be present and because for the inspections scheduled in August, she had not explained why she was inspecting. The tenants indicated that they were fearful that the landlord's witnesses were gang members and stated that they did not want to be alone with the landlord or her witnesses but thought they should both be present when she entered.

The landlord testified that the rental unit is heated by a fireplace and by in floor heating. The landlord lives in the upper floor of the residence and has an office on the lower level. She testified that the tenants set the thermostat to high, which made her office so hot, she could not use it. She alleged that the tenants keep windows open and run fans continuously, which combined with the high setting of the heat, has caused her electric bill to skyrocket. The landlord stated that the tenants pay $150.00 for utilities each month, but claimed that this did not cover the excessive use of electricity. She claimed

that the continual use of fans when the tenants were not home posed a risk of sparking an electrical fire. The landlord further claimed that because the tenants left windows open when they were not at home, this posed a security risk as intruders could enter a window to access the rental unit and then break down an interior door to access the landlord's portion of the home.

The tenants stated that the thermostat is located in the rental unit and argued that they have the right to set the heat at a level that is comfortable for them. They testified that they like the house to be cool, which is why they have kept fans running and windows open. They acknowledged that they have left windows open while they were not at home, but argued that this does not pose a risk to the landlord because the interior door separating the rental unit from the landlord's portion of the home is a sturdy fire door which cannot be easily compromised. They further argued that the fans are CSA approved and pose no safety risk.

The landlord testified that the tenants have repeatedly driven up the curb and parked with their passenger side tires on her lawn, causing damage. She stated that she reseeded an area which was affected by the tenants driving on the lawn. The landlord stated that she put up small fences to protect her sprinklers, but the tenants removed the fences. The tenants responded by providing copies of city bylaws which indicate that the area from the property line to the curb is city property but is the responsibility of property owners to maintain. The tenants argued that because the part of the grassy area adjacent to the curb on which they parked was actually city property, their parking on that area could not be a disturbance to the landlord, but to the city. The tenants also disputed the amount of damage caused by parking on the grass. They argued that pursuant to the bylaw, the small fences erected by the landlord were illegal and stated that they were instructed by the city to remove the fences.

The landlord submitted evidence showing that the tenants had placed a letter entitled "Notice of trespass" on the car of one of her guests. The notice stated the following:

> You are not permitted on the property of [rental unit address] from the gate in without our express permission, which you have been denied. You have not given us your name and address so we have taken a photo of your license plate.
>
> Any attempt to trespass will bring upon you the full force of the law. You can be arrested on the spot because you have been warned.

The landlord maintained that the area outside the home was common property, shared by the landlord and tenants, and that she and her guests could access those areas freely. The tenants testified that according the *Trespass Act*, anyone who appeared on

their property was required to identify themselves and could not access any part of the property without their express permission.

The landlord further complained that the tenants continuously banged on the walls of the unit, disturbing her in her portion of her residence. The tenants denied banging on the walls.

The landlord testified that the tenants have taken up the entire south side of her house with up to 75 plant pots, most of which contained high plants. The landlord gave the tenants written notice to move the plants but they did not do so. The tenants claimed that because the tenancy agreement did not specifically state that they could not use the area in question, they were entitled to use it freely.

The landlord testified that she repeatedly requested that the tenants stop running their bathroom fan continuously as she could hear the hum from her part of the unit. She stated that her issue with the bathroom fan is its use for extended periods of time rather than intermittent use as required for ventilation. The landlord provided copies of letters in which she asked the tenants to reduce their use of the fan. The tenants argued that their use of the fan was reasonable and should not be restricted and that any noise it generated should have indicated to the landlord that repairs were required.

The landlord made a number of other allegations which I find unnecessary to recount.

The tenants asked that I order the landlord to repair an interior light in the living room which has not functioned properly since the outset of the tenancy. The landlord testified that she has had the light examined and been told that it cannot be repaired and stated that when the tenancy began, she told the tenants that the light did not function properly. The tenants also requested that I order the landlord to repair an exterior light which is not functioning. The tenants claimed that in order to access the rental unit, they must use a flight of stairs and that because the exterior light is not functioning, the area which they must traverse is not sufficiently lit and is hazardous. The landlord claimed that the light provided was adequate.

The tenants seek authorization to padlock a gate which leads to the patio and yard they have used throughout the tenancy and an order prohibiting the landlord from bringing anyone into the rental unit other than repairpersons. The landlord took the position that she has not contravened the Act or tenancy agreement by accessing common areas and by bringing witnesses to the rental unit.

Analysis

First addressing the notice to end tenancy, it appears that the tenants have suffered under a misapprehension that they have more rights than is actually the case.

While the Act directs landlords to provide written notice of entry and specify a time, date and purpose for entry, it does not prevent landlords from bringing witnesses into the rental unit. The landlord would be responsible for the conduct of those witnesses and would not be free to bring an unreasonable number of witnesses, but in situations such as this where the parties have approached their relationship in an adversarial manner, bringing witnesses when inspecting the unit seems prudent. I find that the tenants had no right to bar the landlord from entering their unit as they did in August and September. Further, provided proper notice has been given, section 29 of the Act permits landlords to enter the rental unit regardless of whether the proposed time is convenient for the tenants. I find that the tenants unreasonably placed demands on the landlord, first saying that she could not enter when they were both there, then saying she could not enter when only one was there. This inconsistency serves to show that their intent was to prevent access. I find that the tenants' actions in preventing legal access seriously jeopardized a lawful right of the landlord.

While the tenants pay a flat rate for utilities, and it appears that this payment includes all utilities, not just electricity, this does not entitle them to use utilities unreasonably. The tenants acknowledged that they use the bathroom fan and 2 electric fans frequently and argued that it is their right to do so. They argued that because they have control over the thermostat, they are entitled to set the temperature at whatever they decided was a comfortable level. Although the tenants denied having set the in floor heating at an excessive level, I find it more likely than not that this was the case. I find it likely that the tenants used fans in the unit to cool it off and it seems unlikely that they would have needed to use them so regularly if the unit had not been excessively hot. Further, the tenants displayed an attitude that they would exercise what they believed to be their rights regardless of the impact it had on the landlord and apparently, even if they themselves experienced no benefit from such an exercise. I find that the tenants' actions in this regard was both a significant interference with and an unreasonable disturbance of the landlord.

The tenants did not deny parking on the lawn and the photographic evidence clearly shows that they did, at least on occasion. While the area of the lawn on which the tenants' tires rested may be the property of the city, it is the landlord's responsibility to maintain that area and I accept that it is important to her to maintain the front yard. The tenants provided no reason why they had to park with their right side tires resting on the

lawn and I find that they easily could have avoided parking in that manner in order to avoid confrontation, but they chose not to follow that course of action. I find that by parking on the lawn, the tenants have unnecessarily forced the landlord to perform additional maintenance to the lawn, posing a significant interference.

I find the tenants' accusations that the landlord's guests were trespassing to be particularly disturbing. The tenancy agreement grants exclusive possession of the rental unit to the tenants. Any area of the residential property over which they were not given exclusive possession must be considered common property which the tenants share with the landlord. The tenants have chosen to expropriate the area on the south side of the residence and assert exclusive possession of it despite there being no lawful basis on which they can do so. The landlord is free to access any of the common areas and may invite guests to enjoy those areas as well. Under the *Trespass Act*, the landlord is also an occupier of the property, so any of her invitees would not be trespassing. I find that the tenants' behaviour in advising the landlord's guests that they were subject to arrest if they returned to the property to constitute an unreasonable disturbance.

I find that the remaining allegations are either unproven on the balance of probabilities or sufficiently insignificant provide grounds to end the tenancy.

For the reasons explained above, I find that the tenants have significantly interfered with the landlord, unreasonably disturbed her, and have seriously jeopardized her lawful right. I find that the landlord has grounds to end the tenancy. I decline to set aside the notice to end tenancy and I dismiss that part of the tenants' claim. Although the notice's effective date is October 31, the scheduling of the hearing has rendered the effective date unworkable. I order that the tenancy end on November 30, 2011.

As the tenancy will be ending soon, I find it unnecessary to address the question of repairs as they are not so serious as to require immediate attention. The claim for an order compelling the landlord to perform repairs is dismissed.

I also dismiss the claims for an order authorizing the tenants to padlock the gate and an order limiting the landlord's access to the rental unit. I find that the area which the tenants wish to secure is common property and the landlord should have free access to that area. I find insufficient evidence to show that the landlord has failed to comply with the Act when accessing the rental unit and find that an order limiting her access is not required.

I dismiss the claim for an order permitting the tenants to reduce their rent. The tenants' monetary claim is still before me and will be decided after evidence has been adduced

at the reconvened hearing. Any compensation to which the tenants are entitled can be addressed in the form of a monetary order. The tenants will pay full rent for the month of November.

At the hearing, the tenants advised that the in floor heating is no longer functioning, alleging that the landlord had cut off power to the system. The landlord denied having done so and stated that provision of in floor heating is not required under the tenancy agreement. I advised the landlord that because the tenants have had the use of in floor heating throughout the tenancy, I considered it to be part of the services provided with the rental unit and I directed her to either restore the use of that system or to immediately arrange for a repairperson to fix the system.

Conclusion

The claim for a monetary order will be addressed after the reconvened hearing. The balance of the tenants' claims are 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: October 28, 2011

Residential Tenancy Branch