



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This matter proceeded by way of a conference call hearing, pursuant to the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the Tenant requesting that a One Month Notice to End Tenancy be cancelled, requesting a monetary order for compensation for damages or loss under the Act, regulation or tenancy agreement, and the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary Matter(s)

The security camera, the south facing deck, and Res judicata

The Tenant stated at the hearing that a prior decision of December 15, 2011 did not make a decision on the issue of the security camera or the south facing deck, also known as the side deck. The Tenant stated that the other tenants on the property continue to have a camera pointed at the entry/front door of her rental unit and the Landlord has done nothing about this. The Tenant stated that the other tenants on the property and the Landlord wish her to cease using the south facing deck. The Tenant is seeking compensation for this lack of privacy and stated that she wants the other tenants and Landlord to leave her alone and not remove her access to common areas and services or facilities on the property that she has historically used.

The Landlord stated that she was not able to attend the hearing on December 15, 2011 and wants the decision changed.

The decision of December 15, 2011, states that the Tenant was seeking an order to have the camera removed, as it is a breach of her privacy and harassment, and she is seeking compensation. The Tenant stated at the current hearing that nothing has changed and stated her testimony was the same.

The decision of December 15, 2011, states that the Tenant was seeking an order allowing her use of the side deck of the house and compensation. The Tenant stated at the current hearing that nothing has changed and her testimony is the same.

I find that due to section 77(3) of the Act and the legal principal of Res judicata, I cannot grant the Tenant's request to re-hear the issue of the security camera and the south facing deck as this matter was already heard and decided upon at the hearing of December 15, 2011 with a decision issued the same date. Although the Tenant disagrees that a decision was made, I find that she is incorrect as the decision clearly states with regards to the security camera, "based on the testimony and lack of evidence before me, I decline to make any order regarding this specific issue". I also find that the decision clearly states with regards to the south facing deck, also known as the side deck, and the tenancy agreement, "the agreement does not specify any restrictions or limitations on the tenant's use of the common areas. The tenant has established a pattern over her three year tenancy that she has always enjoyed use of the deck and was never informed of any issues from the present landlord and as such I decline to make any order in regards to this issue."

The Tenant's and Landlord's request to rehear or change the December 15, 2011 decision is dismissed.

Landlord's request to make an Application for dispute resolution

At the hearing the Landlord stated that they had sent in an Application form within their Respondent evidence package, which they wished to have heard. I advised the Landlord that they had not applied for dispute resolution in accordance with the Act, and that they must follow proper procedures Application procedures.

Issue(s) to be Decided

What tenancy agreement, if any, is in effect and who is the Landlord?

Are there any restrictions on property areas the Tenant may use under the current tenancy agreement?

Is the Tenant entitled to any compensation for damages due to a loss of peaceful enjoyment?

Should the One Month Notice to End Tenancy be cancelled?

Background and Evidence

The tenancy agreement and the Landlord

Both parties submitted into evidence a copy of the written tenancy agreement signed with the Tenant September 01, 2008 for the rental unit. The tenancy agreement states that CL is the owner of the property and the Landlord, and that CA and AA are acting as agents for the Landlord CL. The tenancy agreement between the parties also states that the Landlord CL holds the Tenant's security deposit of \$425.00. The tenancy agreement states that this is a month to month tenancy with a rent of \$850.00 per month due on the first of each month. The parties agree that the rent is currently \$950.00 per month.

The Tenant testified that she moved into the rental unit, a suite above the garage, in 2007 and had a verbal tenancy agreement at that time. The Tenant stated that in 2007 she was dealing with the people renting the main house, as they informed her that they were the agents for the Landlord. The Tenant stated that she had met the Landlord CL when she had visited the property.

The Tenant stated that in September 2008 new tenants CA and AA moved into the main house. On September 01, 2008 a written tenancy agreement was drawn up and signed by the Tenant and CA and AA acting as agents for the Landlord. The parties submitted a copy of the tenancy agreement into evidence. The tenancy agreement states CL was the Landlord, and AA and CA were the Landlord's agents. The Tenant testified at the hearing that the CA and AA withdrew their involvement as agents for the Landlord at the end of September 2011.

The Tenant stated that she began to deal directly with the Landlord CL in September 2011, and effective November 01, 2011 she began to pay her rent directly to the Landlord as instructed. The Tenant stated that prior to that time she had been paying her rent to CA and AA and then they would provide her rent portion to the Landlord.

The Tenant stated that the Landlord approached her about signing a new tenancy agreement that was different than the tenancy agreement that she had signed September 01, 2008 with the former agents of the Landlord. The Tenant stated that in the proposed new tenancy agreement of October 01, 2011 the Landlord wished to place restrictions on her use of common property and services or facilities, which was a significant change to the prior tenancy agreement that did not have restrictions. The Tenant stated that she advised the Landlord that she refused to sign the new agreement and wished the existing agreement to remain in place.

The Landlord's position is that the main tenants CA and AA who rent the house on the property had a tenancy agreement with the Tenant which is now null and void. The Landlord's written submission stated that "with my permission" CA and AA "sublet the suite above the garage" to the Tenant. The Landlord states in her written evidence "The property is in the name of a numbered company that I control. I technically act as the

agent but I am the only person with an ownership interest. I have 'owned' the property for many years." The Landlord's written evidence submission also states that the Tenant "has been a tenant since 2007 occupying a suite above the garage, attached to the main house which is independently rented." The Landlord's position is that the Tenant does not have a valid tenancy agreement with her as the Tenant refuses to sign the proposed tenancy agreement of October 01, 2011 with her. The Landlord submitted a copy of the proposed tenancy agreement with a map attached showing property area restrictions she wishes the Tenant to agree to.

Property areas

The parties agree that the Tenant can continue to use the chicken coup for storage, the horse area which at the south west corner of the property, the washers and dryers the Tenant has installed in the garage workroom area, and the two car storage areas on the west side of the property.

Both parties requested clarification on whether the Tenant is entitled to continue to use the property areas as follows:

- South facing deck
- Greenhouse
- Shared storage area in back of the garage
- Garden areas surrounding the property

The Tenant is seeking a decision or orders confirming that the disputed areas are allowed for her continued use.

The Landlord is seeking a decision that the Tenant cease using the disputed property areas and that only AA and CA be allowed to use those areas.

The Tenant stated that there is nothing in her tenancy agreement restricting her from usage of the disputed property areas and that until CA and AA became unfriendly towards her they did not have a problem with sharing these areas with her either. The Tenant has historically used these areas since 2008. The Tenant stated that she cannot store several of her items in the chicken coop as the area is not heated, is full of holes, and rodents get in there. The Tenant wishes to continue to use the shared storage area at the back of the garage. The Tenant stated that when CA and AA moved onto the property in 2008 all of this was discussed and agreed to with them at the time and there were no restrictions stated in the tenancy agreement which they signed together.

The Landlord stated that the both sets of tenants complain about one another frequently. The Landlord stated that CA and AA came to her and said they would no longer deal with the Tenant directly or act as an agent, so she agreed to step in and try

to resolve the ongoing complaints between these parties. The Landlord stated that the Tenant should sign a new tenancy agreement with her which restricts her access to several areas of the property, as that would prevent further conflict between the tenants and may put a stop to the complaints. The Landlord stated that the tenancy agreement from 2008 does not give the Tenant permission to use the areas she has been using.

CA stated that she had permitted the Tenant to share the property areas since 2008 when the tenancy agreement was signed, however, she no longer wishes to share these areas with the Tenant as they no longer get along.

Tenant's claim for compensation for damages and losses

The Tenant stated that the other tenants disturb her peaceful enjoyment of various areas of the property, and that is it not just the security camera and the south facing deck usage that are at issue, but also a shared storage area in back of the garage, and garden areas. The Tenant stated that CA and AA are being not cooperative with her about the shared property areas and are denying her privacy concerns when she tries to speak with them. The Tenant stated that AA attempted to come after her physically after a misunderstanding and she had to call the police as she felt threatened. The Tenant stated that AA has not come after her since and that she tries to avoid the other tenants when she can, although it is difficult. The Tenant stated that she just wants everything to be peaceful between her and the other tenants and she does not wish to move out. The Tenant stated that CA and AA and their grandchildren are watching her around the property, using a security camera pointed at her door, and are listening in to her conversations when they are in the shared garage area directly below her suite which has thin walls. The Tenant stated she wants \$500.00 in compensation for this lack of peaceful enjoyment.

CA stated the Tenant gets upset and accusatory whenever they talk and they no longer get along. CA stated that the Tenant has accused them of items going missing from the storage area, listening to her conversations when they are working in the garage below the suite, and watching her on the property. AA uses the garage for his car, their garbage disposal is located there, the work area is there, and the shared storage area is in the garage. CA stated that they go in this shared area frequently but mostly only during daytime hours and they are not listening to the Tenant, whose suite is directly above this area. AA is hard of hearing, but if they can hear the Tenant or she can hear them in the shared area there is nothing that can be done about it because the Tenant chose to rent a suite directly above the garage. CA stated that the Tenant's behavior has affected her and her family and she is taking anti-anxiety medication due to all of the stress of dealing with the Tenant, but they have not had to call the police about the Tenant. CA and AA no longer wish to deal with Tenant, and they want her access to

many property areas removed or restricted. CA states that they have no intention of moving out and that it is the Tenant who should move out.

The Landlord stated that the tenants have made several complaints about one another. The Landlord stated that she has been trying to resolve the complaints between the tenants. The Landlord referred to a complaint that the Tenant had spoke to CA and AA's teenage grandchildren negatively about CA and AA's parenting. The Landlord stated that she spoke to the Tenant about the complaint and that the Tenant complied with the Landlord's request not to criticize CA and AA to the grandchildren and to try not to speak to them further. The Landlord stated that if the Tenant would agree to restrict her access to various areas of the property, as indicated on the map provided by the Landlord to the Tenant, this would reduce the contact between the tenants. The Landlord does not feel that the Tenant is entitled to any compensation.

One Month Notice to End Tenancy

The Tenant confirms that she received a One Month Notice to End Tenancy for Cause by from the Landlord on December 20, 2011. The reasons listed on page two of the Notice served on the Tenant states that the Notice was issued because the "Tenant or a person permitted on the property by the Tenant has: significantly interfered with or unreasonably disturbed another occupant or the Landlord." The Tenant filed an Application to dispute the Notice on December 29, 2011, which is within the time frames required by the Act.

The Tenant stated that she has not significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Tenant stated that this is the second attempt by the Landlord to get her to leave, as a previous One Month Notice to End Tenancy was served in August 2011, which was successfully disputed and cancelled at a hearing on September 21, 2011.

The Tenant stated that the Landlord's reasons for the previous Notice are identical to the reasons stated on the Notice issued on December 20, 2011. The Tenant stated that it is CA and AA that are significantly interfering with and unreasonably disturbing her. The Tenant has tried to talk to CA and AA about her privacy concerns about items going missing from the storage. The Tenant stated that she always pays her rent on time, maintains the property nicely, and is a good tenant. The Tenant wants the Notice to be cancelled.

The Landlord stated the tenants on the property no longer get along with one another. The Landlord stated that the best solution would be for the Tenant to move or to sign a new tenancy agreement restricting her access to areas of the property also used by CA and AA. The Landlord has never had to call the police about the Tenant. The Landlord attended a prior hearing on September 21, 2011 with CA as they had served the Tenant with a One Month Notice to End Tenancy in August 2011 and she had hoped this would

result in the Tenant moving out or an eviction. The hearing decision of September 21, 2011 cancelled the Notice to End Tenancy and the tenancy continued.

The Landlord states her reasons for issuing the Notice on December 20, 2011 are due to:

- CA's health being affected as a result of the Tenant's constant complaints and harassment. CA has almost suffered a nervous breakdown and is currently under doctor's care and medication.
- The Tenant has used CA and AA's (garage storage room) space to store her extra collected boxes and bags with her belongings and refused to move them into a storage area (chicken coup) assigned to her.
- The Tenant's lack of cooperation with the other tenants, CA and AA.
- The Tenant's refusal to sign a (new) rental contract starting October 01, 2011.

Analysis

I have considered all relevant testimony and evidence, and on a balance of probabilities, I find as follows:

The tenancy agreement and the Landlord

The definition of "landlord" in the Act includes the owner of the property. Based on the testimony and written evidence submitted by CL; I find she meets this definition. The Landlord testified that she has been receiving rent directly from the Tenant since November 01, 2011, rather than through an agent. The Landlord is now managing this tenancy as CA and AA have withdrawn their involvement as agents. The tenancy agreement identifies CL as the Landlord and that she holds the Tenant's security deposit. The tenancy agreement signed September 01, 2008 applies to the rental unit and indicated that this is not a fixed term tenancy, but rather a month to month tenancy with no set end date.

I find that CL is the Landlord and owner of the rental unit which the Tenant is renting and that the tenancy agreement of September 01, 2008 applies to this tenancy until such a time as the Tenant and Landlord agree to a new one, as provided by section 14(2) of the Act, or until the tenancy ends.

Property areas

I find that the Tenant has established a pattern historical usage of the following common areas, services or facilities:

- the chicken coup for storage
- the horse area which at the south west corner of the property
- the washers and dryers the Tenant has installed in the garage workroom area
- the two car storage areas on the west side of the property
- the south facing deck (as determined in decision issued December 15, 2011)

- the greenhouse
- the shared storage area in back of the garage
- the garden areas surrounding the property

The evidence provided by the Tenant, Landlord, and CA indicates that the tenancy agreement signed with the Tenant September 01, 2008 did not restrict the Tenant's usage of these areas, and the parties have reached no new agreement with the Tenant to restrict usage of these areas.

The Tenant has established a pattern of usage of these areas since September 01, 2008 and done so with the consent of the former agents of the Landlord who are also the other tenants on the property. I find that under the Tenant's current tenancy agreement of September 01, 2008, which is in effect, there are no restrictions on the Tenant in her usage of these areas. The Landlord is restricted by section 27 and 28 of the Act with regards to imposing changes to the tenancy agreement in relation to common property, services, or facilities. There has been no evidence provided at this time to indicate that the Landlord has revoked or restricted any of the property areas at this time, rather the Landlord has only "proposed" that the Tenant sign a new more restrictive tenancy agreement. As I found no evidence of the changes being implemented at this time, it is premature for the Tenant to request orders regarding property usage. I decline to issue any orders regarding property usage at this time.

Tenant's claim for compensation for damages and losses

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, the balance of probabilities. To prove a loss and have the Landlord (Respondent) pay for the loss, the Tenant (Applicant) must prove the following:

- that the damage or loss exists;
- that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- the actual amount required to compensate for the claimed loss or to repair the damage; and

- that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Act provides a set of rights and responsibilities between landlords and tenants, as does the signed tenancy agreement. The Landlord must not breach the Act or the tenancy agreement.

I find that the Landlord has been responding to the issues and trying to resolve the issues, however, a resolution has not yet been agreed to by the both sets of tenants. At this time I do not find that the Landlord or the other tenants have breached the peaceful enjoyment of this Tenant. The Tenant has provided no proof of any police action over an alleged attempted physical assault by AA or of any subsequent police incident. While the Landlord wants to revoke or restrict the Tenant's access to various areas of the property there has been no evidence provided at this time to indicate that the Landlord has removed usage of any of the property areas from the Tenant.

The Tenant has provided insufficient evidence that she has had a loss or incurred any costs. The Tenant has confirmed that her suite has thin walls and the garage below her suite is a shared area. If the other tenants can overhear the Tenant while they work below in the garage or elsewhere on the property this considered the sounds of normal day to day living, and is to be expected due to the shared arrangement of many areas of the property. The Tenant has not proven that the Landlord has breached section 27 or 28 of the Act at this time. As a result I find that the Tenant has not proven her claim for damages or losses in the amount of \$500.00. I dismiss the Tenant's claim for damages or loss under the Act, regulation or tenancy agreement.

One Month Notice to End Tenancy

I accept the parties' evidence that the Tenant was personally served with the One Month Notice to End Tenancy for Cause on December 20, 2011 and the Tenant filed an Application to dispute the Notice within the timeframes allowed by the Act.

I find that the One Month Notice to End Tenancy for Cause was not issued in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline. The reason of "illegal activity" listed on page two of the Notice, which derives from section 47 of the Act, has not been proven by the Landlord. The Landlord has failed to prove that the Tenant has breached the Act, Regulation, or tenancy agreement.

I do not find that Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. Both sets of tenants at the property have been complaining about one another to the Landlord. The Landlord has not successfully mediated the issues that exist between the parties. The Landlord has, without sufficient evidence, taken action by issuing a Notice against the Tenant.

Based on the above-mentioned reasons, I order that the One Month Notice to End Tenancy, served on December 20, 2011, be cancelled.

As the Tenant has been partially successful in her Application, I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from her next rent payment due, so that the Tenant only pays \$900.00 for that month.

Conclusion

I find that CL is the Landlord of the rental unit, which the Tenant is renting above the garage, and that the tenancy agreement of September 01, 2008 applies to this tenancy until such a time as the Tenant and Landlord agree to a new one or until the tenancy ends.

I have made a finding regarding the Tenant's usage of common property or services or facilities as referenced in the analysis section of this decision.

I have dismissed the Tenant's claim for damages or loss under the Act, regulation or tenancy agreement.

I have granted the Tenant's request to cancel the One Month Notice to End Tenancy.

I have granted the Tenant's request to recover the \$50.00 cost of the Application fee, and ordered her to deduct it from her next month's rent.

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: January 30, 2012.

Residential Tenancy Branch