



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RPP, AAT, FF, O

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy, a monetary order and orders compelling the landlord to comply with the Act, return personal property and permit access to the rental unit. Both parties participated in the conference call hearing.

At the hearing, the tenants advised that they intended to end the tenancy at the end of the month and therefore only wished to proceed with the monetary claim. I consider the remaining claims to have been withdrawn.

I note that there was some testimony about a dispute regarding an alleged contract for services between the landlord and tenants, but at the hearing I advised the parties that this issue fell outside my jurisdiction.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenancy began in May 2011. The tenants testified that the male tenant is licensed to use marijuana for medical purposes and that when they entered into the tenancy, they made the landlord aware of his medical requirements. The landlord did not dispute this.

The tenants testified that over the course of the tenancy, the landlord has issued several warning letters advising of complaints from neighbours about the marijuana use as well as a notice to end tenancy for cause. The tenants stated that in June 2011, the male tenant had a number of friends over to celebrate his birthday and that neighbours complained that he and his friends were smoking marijuana, labelling it a "pot party". The tenants also expressed frustration that the landlord criticized their 19 year old son

for smoking marijuana and stated that he does not smoke marijuana in the unit and that they cannot control his activities outside the unit.

The landlord testified that she had to address complaints from other tenants and stated that she wanted to encourage the tenants to reduce the impact of their marijuana use on other occupants of the residential property.

The tenants testified that the landlord kept renovation materials in their laundry room from May – October 2011, depriving them of the use of most of the room. Their advocate testified that the tenants repeatedly complained to him about the materials. The tenants also complained because there was a spare refrigerator in the laundry room which they couldn't use because the landlord kept her paint rollers in it. The landlord testified that the tenants did not complain about the refrigerator or renovation materials until the fall of 2011 and she went over right away to move them, but found them covered with bags of laundry. She moved the materials after the tenants removed the laundry.

The tenants alleged that the landlord continually harassed them by issuing them warning letters and the notice to end tenancy. They complained that she breached the Act in numerous ways, including providing notice to show the unit that referred to days of the week rather than specific calendar dates. They further alleged that the landlord embarrassed them by speaking disparagingly of them when she recently showed the rental unit to prospective tenants.

The tenants seek to recover \$3,600.00 which represents the return of half the rent paid over a 6 month period.

Analysis

The tenants bear the burden of proving that they have lost quiet enjoyment of the rental unit. Section 28 of the Act grants tenants quiet enjoyment which includes "freedom from unreasonable disturbance." Having reviewed the evidence and testimony, I am unable to find that the disturbance alleged has been unreasonable.

The landlord issued the tenants 2 warning letters, a year apart, acting on complaints from other tenants who also had a right to quiet enjoyment. The June 2011 letter referred to a "pot party" and directly reflected complaints received by other tenants. I find that the landlord had an obligation to follow up on tenant complaints and as the tenants admitted that there was a birthday celebration, which can be characterized as a party, and that guests were smoking marijuana, I find the description of a "pot party" to be accurate. The male tenant may have a license to use marijuana for medicinal

purposes, but that does not give him the right to invite others to a shared common area to engage in a practice which disturbs other tenants.

The second warning letter, issued in March 2012, asked the tenants to reduce the noise level and loud vulgarities which could be heard by other tenants. I find the request to be reasonable and again, the tenants do not have the right to engage in activities which cause other tenants to lose the quiet enjoyment of their units.

I see no difficulty with the landlord having issued a notice to end tenancy for cause during the fixed term tenancy. She was entitled to do so and the tenants were entitled to dispute the notice to allow this tribunal to determine the merits of the claim. The issuance of a single notice to end tenancy within a year does not in my opinion constitute harassment.

The only other written communication by the landlord was a letter in which she declined to renew their lease at the end of the fixed term. The parties provided a copy of a tenancy agreement in which the tenants agreed that the landlord could give written notice advising that the fixed term would not be renewed. The tenants are clearly conversant with their legal rights and I find that they chose freely to enter into this contract, despite the fact that their previous fixed term had not yet expired at the time the new agreement was signed. The landlord was merely exercising her contractual right in issuing the notice that the fixed term would not be renewed.

I am not satisfied that the tenants asked the landlord to remove the renovation materials prior to the fall of 2011. While the tenants may have been entitled to exclusive use of the laundry room, they had an obligation to bring to the landlord's attention that they felt that their use was compromised by those materials and I find that they failed to do so until late in 2011, at which time I find that the landlord acted to remove the materials.

While the notice of entry provided by the landlord to show the rental unit was not sufficiently detailed to meet the requirements of the Act, I find that the impact of this breach was so minimal that it does not warrant compensation.

The animosity between the parties is significant and while comments made by the landlord to prospective tenants may have been distressing, I was not given sufficient detail to allow me to make a determination that they were sufficiently egregious to warrant compensation.

I find that the tenants have failed to prove their claim on the balance of probabilities.

Conclusion

The claim is 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: May 17, 2012

Residential Tenancy Branch