



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, MNDC, LAT, RR, 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 and orders authorizing her to reduce her rent and change the locks. The landlord filed a cross-application for an order of possession. Both parties participated in the conference call hearing.

Although the tenant's application included an occupant of the rental unit, M.M., as a co-applicant, at the hearing it became apparent that the tenant M.B. is the party with whom the landlord has a contractual relationship and that M.M. is an occupant rather than as a tenant. I have amended the style of cause to reflect M.B. as the sole respondent.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Should the tenant be permitted to change the locks to the rental unit?
Should the tenant be permitted to reduce her rent?

Background and Evidence

The parties agreed that the tenant was served with a one month notice to end tenancy (the "Notice") on April 23. The Notice alleges the following:

- The tenant is repeatedly late paying rent;
- The tenant or a person permitted on the property by 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;
- The tenant 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;
 - Jeopardize a lawful right or interest of another occupant or the landlord;
- The tenant has not done required repairs;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- Rental unit/site must be vacated to comply with a government order;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order; and
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The tenancy has lasted some 7 years. The landlord testified that the rent was late in 2006 - 2009 and that in 2008, the tenant let food rot in the unit, which disturbed other occupants of the building. He stated that the primary issue with the tenant was the actions of her boyfriend, M.M., who also occupies the unit. The landlord testified that M.M. has harassed his workmen by taking photographs of them, he suspects M.M. is dealing drugs and he telephoned the police unnecessarily. The landlord also alleged that both M.B. and M.M. use marijuana in the rental unit which has disturbed other tenants. The landlord provided letters of complaint from 2 tenants as well as from the wife of the manager, who also resides in the building. The parties agreed that the tenant rarely stays at the rental unit, but the landlord alleged that when she does, the smell of marijuana is overpowering.

M.B. testified that she uses marijuana, but stated that she uses it for medical purposes and is in the process of obtaining a license for personal use. She stated that she does not use marijuana in the unit, but goes offsite to smoke. She acknowledged that the landlord had asked her not use marijuana in the building. M.M. denied using marijuana or dealing drugs and testified that he telephoned the police because when he was attempting to have Shaw install cable service, Shaw had lost its key to the lockbox and the landlord would not open a door to which Shaw required access.

The tenant seeks a monetary award for \$500.00, claiming that if she has to move, it will cost her at least this much to move. She further claimed \$490.00 in compensation for a period of approximately 4 weeks in which she did not have hot water and argued that the landlord had given other tenants \$100.00 in compensation for that period. The landlord acknowledged having compensated other tenants, but claimed that the tenant was not in the building during that period and therefore did not suffer the same loss. The tenant claimed that although she often is not at the building, the hot water outage

came at a time when she had returned to the building and as a result, she had to leave and stay with a family member.

The tenant seeks an award of \$500.00 for lack of security, claiming that her key fit a neighbour's door and that the handle on a sliding glass door was broken. She further claims \$2,500.00 for loss of quiet enjoyment resulting from the landlord not having treated her and M.M. respectfully and for not complying with the Act. She also claimed that the landlord took too long to perform repairs, including not fixing a plugged sink for 5 days.

The landlord denied having deprived the tenant of quiet enjoyment and testified that repairs are difficult to perform because M.M. sets conditions on the landlord's ability to enter the rental unit.

Analysis

First addressing the Notice, the issues of late payment of rent, not paying the security deposit and leaving rotting food in the unit occurred 3-4 years ago and I find they are not sufficiently current to support a notice to end tenancy.

I find on the balance of probabilities that the tenant is using marijuana in the rental unit and by her own admission, she is not legally authorized to do so. I find it unlikely that other tenants would write letters of complaint if she were leaving the unit to smoke. I find that the use of marijuana in the building significantly interferes with and unreasonably disturbs other tenants and the manager and I find that the landlord has established grounds to end the tenancy. I therefore dismiss the tenant's claim for an order setting aside the Notice and I grant the landlord an order of possession effective June 30, 2012. Although the order names only the tenant, I note that it is effective against all who take occupancy under her tenancy, including M.M. The order may be filed in the Supreme Court for enforcement.

As for the tenant's monetary claim, I find insufficient evidence to show that the tenant is entitled to what she is claiming. I find that the tenancy ended due to the tenant's actions and therefore the tenant would have to bear the cost of her moving expenses. Although the tenant's unit may not have been secure, no evidence was presented showing that she suffered a loss as a result and I therefore find that compensation is not warranted.

I find that the tenant has not proven that the landlord caused her to lose quiet enjoyment of the unit and I find insufficient evidence to show that the landlord has been negligent in performing repairs. As for the compensation given to other tenants for the loss of hot water, I am not satisfied that the tenant was staying in the building at the time the hot

water was unavailable and therefore I am not persuaded that she is entitled to compensation.

I dismiss the tenant's claim for compensation as well as her claim for orders authorizing her to reduce her rent and change the locks

Conclusion

The landlord is granted an order of possession. The tenant's claim is dismissed in its entirety.

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: June 04, 2012

Residential Tenancy Branch