

DECISION

Dispute Codes CNC, MNDC, ERP, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a Notice to End Tenancy – Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order that the Landlord make emergency and other repairs – Section 32;
4. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65; and
5. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to emergency or other repairs to the unit?

Is the Tenant entitled to a reduction in rent?

Background and Evidence

The tenancy began on April 1, 2011. Rent in the amount of \$1,050.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$525.00.

On June 29, 2012, the Landlord served the Tenant with a Notice to End Tenancy for Cause (the “Notice”). The Notice lists as the reason for the cause that 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 Landlord states that the Tenant has called the Landlord that something was wrong with the ceiling and that the ceiling was probably coming down. The Landlord states that when the maintenance person showed up to inspect the problem, the Tenant did not answer the door. The Landlord states that the Tenant only opened the door two hours later. The Landlord states that the Tenant argues about everything and does not allow the Landlord into the unit and that the Tenant refused entry following a 24 hour notice of such on three occasions. The Landlord states that the Landlord has its own life and that the Tenant cannot refuse to let the Landlord carry out their job.

The Tenant states that after the bathroom ceiling collapsed on June 17, 2012 and the Landlord was immediately informed of the problem and repaired by ceiling by covering the hole temporarily. The Tenant states that on June 20, 2012 more leaks occurred in the ceiling expanding the hole and creating leaks in the hallway ceiling. The Tenant states that the Landlord inspected the problem but did nothing. The Tenant states that on June 27, 2012, the hallway by the Tenant's unit collapsed and although the Landlord cleaned the carpets in the hallway in front of the unit, the Tenant's unit was still not repaired. The Tenant states that the unit was repaired by July 4, 2012 but that the repairs to the hallway ceiling was not cleaned, finished or painted.

The Tenant states that the Landlord did not clean any part of the Tenant's unit, including the gyproc that fell during the leaks. The Tenant states that the Tenant cleaned the unit and claims \$6.00 for cleaning supplies. The Tenant states that several towels and sheets were used to clean up the water and claims \$60.00 for the cost of cleaning the laundry at the Laundromat. The Tenant states that in order to reduce costs, several of these items were dried outside. The Tenant states that as a result of the hole in the bathroom, that the smell of mould and contamination spread into the unit and that the Tenant had to throw out food from the pantry as a result. The Tenant states that approximately \$120.00 in food was lost and claims this amount. The Tenant states that the kitchen smelled bad and that the Tenant could not prepare food in the kitchen and claims \$300.00 for the loss of the use of this part of the unit for the period in which the

repairs were not done. The Tenant states that in order to get away from the smell and to prepare food, the Tenant stayed at a Hotel for two nights and claims \$233.93 in compensation. The Tenant states that during the period between the collapse and the repair, the Landlord was refused entry on only one occasion and that this occurred when a strange person arrived at the Tenant's unit while her daughter was home alone. The Tenant states that the Landlord was requested to send repair persons after 4:00 p.m.

The Landlord states that on June 27, 2012, the Tenant told the Landlord not to come into the unit anymore and that it was not until the Landlord served the Notice that the Tenant cooperated. The Landlord states that the unit was repaired and painted and that both the unit and carpets were cleaned by the Landlord. The Landlord states that the cost of repairs was \$728.00, the cost of cleaning the carpet was \$90.00 and the cost of cleaning the Tenant's unit was \$107.52. The Landlord states that these receipts were sent as evidence for the Hearing on July 13, 2012 however it is noted that this evidence has not been received at the Residential Tenancy Branch.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. It is not out of the realm of normal for a Landlord to face difficult situations in coordinating the Landlord's obligations to repair while accommodating the Tenant's rights to the unit. I do not find however that the Tenant's actions in attempting to have repairs made while the Tenant's daughter was not home alone are sufficient grounds to end a tenancy. As a result, I find that the Landlord has not substantiated cause to end the tenancy, that the Notice is therefore invalid and that the Tenant is entitled to a cancellation of the Notice.

Section 32 of the Act provides that a Landlord must provide and maintain residential property in a reasonable state of decoration and repair. Where there is a breach of a

statutory duty, the Party making this claim must show that the other party acted negligently in breaching the statutory duty. Although the Tenant argues that the Landlord did not make repairs immediately and therefore caused the Tenant losses, I find that the Landlord did make repairs and based on the undisputed evidence of the Parties that these repairs made by July 4, 2012 were made within a reasonable time period.

Although the Tenant disputes having refused entry to the Landlord beyond one time, I find that the Tenant did act to delay the repairs to the great frustration of the Landlord. As a result, I find that the Tenant has not substantiated on a balance of probabilities that the Landlord did not act to make emergency repairs in a timely manner. Further, although there is a dispute that the hallway ceiling is not aesthetically finished, even if the hallway ceiling is not painted, I do not find that aesthetic repairs are emergency repairs and therefore find that the Tenant is not entitled to an order for emergency repairs. Noting that the Landlord has not provided evidence of finishing or aesthetic repairs to the hallway ceiling, I find that the Tenant is entitled to such repairs and I order the Landlord to finish the hallway as soon as reasonably possible and no later than the end of August 2012.

Accepting that the Landlord did clean the unit but also noting that the date of this cleaning was not provided, and noting that the Landlord did not provide evidence of cleaning to the unit on the first day of the ceiling collapse, I find that the Tenant's evidence that the Tenant used her own towels and sheets to clean the water drainage and that the Tenant is therefore entitled to compensation of **\$66.00** for the cost of laundry and cleaning supplies. I also accept that the odours caused by the ceiling leak did affect the Tenant's food and that \$120.00 is a reasonable amount for the cost of food that would have been affected, I find that the Tenant is entitled to **\$120.00** in compensation.

Given that the Tenant contributed to the delay in the repairs, I find that the Tenant has not substantiated that the Landlord caused the Tenant a loss of use of the unit and I dismiss the Tenant's remaining claim for compensation for such loss.

As the Tenant has been largely successful with its application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$236.00**. I order the Tenant to reduce either August or September 2012 rent by this amount.

Conclusion

The Notice is cancelled and the tenancy continues.

I order the Landlord to make finishing repairs to the hallway ceiling no later than August 30, 2012.

I order the Tenant to reduce August or September 2012 rent by \$236.00.

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: July 23, 2012.

Residential Tenancy Branch