Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, O, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord

The parties agreed the tenant did not serve the landlord with notice of this hearing until October 17, 2012 despite the Application being made on September 20, 2012, however, the landlord had provided a substantial volume of evidence in response to the tenant's claim and indicated she was prepared to proceed with the hearing today. With agreement by both parties the hearing proceeded.

The parties also agreed the tenant is intending to vacate the rental unit on October 31, 2012 and there is no longer a need to dispute a notice to end tenancy. I therefore amend the tenant's Application to exclude the matter of disputing a notice to end tenancy for cause.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for loss of quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 47, 67, and 72 of the *Residential Tenancy Act (Act).*

Background and Evidence

The landlord has submitted a copy of a tenancy agreement signed by the parties on December 6, 2011 for a 1 year fixed term tenancy beginning on January 1, 2012 for a monthly rent of $1,500.00 due on the 1st of each month with a security deposit of $750.00 paid on December 15, 2011.

The tenant submits that as a result of the landlord's failure to ensure adequate security; failure to prevent the tenant being bothered by a neighbours smoking and failure to enforce a no pet rule in the residential property she has found it necessary to end the tenancy and seek compensation for the following:

1. Lost valuables resulting from a break-in in the tenant's storage locker in the amount of $3,300.00 as valued by the tenant's insurance company or in the alternative the $500.00 deductible if the tenant must seek compensation from her insurance;
2. Moving costs in the amount of $1,582.00 based on their move in costs; and
3. Moving costs to remove remaining items from storage locker in the amount of $180.00.

The tenant has provided no documentary confirmation of any of the above noted costs, estimates or valuations.

The tenant submits that there have been multiple vehicle break-ins in the garage; that there have been break-ins in the storage lockers and that they lost valuable possessions; that the landlord has failed to notify the tenant regarding the storage locker break-ins and that they found out about these things from other tenants.

The landlord provided evidence and testimony that although not yet complete they have been taking action on the security issues identified by the tenant and have changed the locks in the storage area and that they are looking at additional recommendations made by police after they had a police officer inspect and provide recommendations on how to improve security. The tenant testified that they have not yet implemented all of these recommendations.

The tenant states that many delivery people in the area have access codes to the building and as a result many non-residents can access the residential property and units at any time. The parties agree that at one time the tenant told the landlord that she had 8 codes that she had obtained to access the building. The landlord submits that they have been trying to get these codes from the tenant so they can deactivate them but that the tenant has not responded to their requests for them.

The tenant testified that she had lost all but one of the codes. The tenant provided the landlord with the one remaining code and the landlord submitted that she would deactivate it immediately. The tenant agreed that if she found the other codes she would provide them to the landlord for deactivation.

The tenant noted that the landlord would post notices on her door and because she travels she was concerned that a notice may be on her door for and provide evidence that no one was at the rental unit for periods of time when she was away. The landlord testified that once the tenant identified this notices were sent to her by email instead.

The landlord stated the tenant did not identify that the security issues were of that great of a concern to her until the landlord contacted the tenant in regard to the tenant's failure to pay rent for September 2012. The tenant testified that she had complained to agents for the landlord as well as to the strata management company agents verbally about her concerns. The tenant states that she didn't pay rent because she wanted to get the landlord's attention because the landlord was not dealing with her complaints

about security. The tenant acknowledges she did not advise the landlord that this was her reason for not paying rent until the landlord contacted her.

The tenant also submits that despite being told prior to signing the tenancy agreement that the building was dog free the tenants have had to deal with dogs and feces found on the residential property. The landlord testified that there are many pets in the building and she would have never identified the building as pet free. The tenancy agreement states: "Pets are permitted with approval, subject to local ordinances and must not disturb neighbours."

The tenant also asserts the landlord failed to stop a neighbouring tenant from smoking on his balcony despite the property being required to be smoke free resulting from a local municipal bylaw. The landlord submits there is not a municipal bylaw that requires the building be smoke free.

The landlord also explained that while there is a no smoking clause in the tenancy agreement for this tenant the building, itself, is not a smoke free building and they have stopped including that clause in tenancy agreements because there is no strata bylaw restricting smoking and because some of the units are owner occupied there is no ability for the landlord to enforce a smoking ban in the residential property.

The landlord also stated the neighbouring tenant does not have a no smoking clause in his tenancy agreement but she has received agreement from that tenant to smoke only when this tenant is not using her balcony. The tenant submits she cannot use the balcony because the neighbour is always out there smoking.

The landlord has submitted into evidence two newsletters from the strata management company to the residents – one dated May 29, 2012 and one dated August 24, 2012. The tenant referenced the section of the May 29, 2012 newsletter speaking about vehicle break-ins and I noted in the hearing that there is reference in the newsletters about no-smoking in common areas and balconies.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act,* regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the

rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

From the evidence before me regarding the theft of the tenant's belongings from the storage locker, I note that in the May 29, 2012 newsletter submitted into evidence there is mention of vehicle break-ins but no such reference to storage locker break-ins. It is not until the August 24, 2012 newsletter that a reference to building security mentions that as a result of cooperative effort of tenants there has been a reduction of storage locker break-ins.

From the landlord's evidence there is an email dated July 4, 2012 providing instruction to "Jodi" to contact the tenant in 527 to advise that their storage locker was broken into and a further email on July 30, 2012 asking Jodi to follow up to see if the tenants locker had been broken into again or if the had just not replaced the lock.

Based on these emails and the balance of probabilities I find it is likely the landlord's agent left a message for the tenant about the break-in despite the tenant's assertion that she was never informed by the landlord about the break-in.

There is no evidence before me that the tenants were unhappy or had indicated to the landlord that they were concerned about the security of the storage locker room prior to the break-ins identified in the above noted correspondence.

With no other evidence break-ins in the storage lockers had been a previous problem I find the tenant has provided no evidence to establish the landlord was in breach or violation of the *Act*, regulation or tenancy agreement.

As such, I find the tenant has failed to establish the landlord should be held responsible for the cost of possessions stolen from the storage locker; for the deductible should the tenant obtain relieve from her insurance company; or for the costs of removing remaining items from their storage locker.

While I accept that the storage locker and vehicle break-ins are of great concern to the tenant I find the tenant's failure to provide any evidence that she had raised these issues to the landlord prior to September 10, 2012 after failing to pay rent; that she has failed to assist the landlord by providing access codes that she says she has obtained so the landlord can deactivate them; and that the landlord has been taking reasonable steps to improve security do not demonstrate the landlord has failed to ensure the tenant has quiet enjoyment regarding security issues.

In relation to the tenant's concerns about pets in the building, I find the tenancy agreement and newsletters submitted into evidence specifically indicate that there are pets allowed in the building and the tenant cannot rely on the presence of pets in the building as a breach of the landlord's obligation to ensure quiet enjoyment.

In relation to the issue of the tenant's neighbour smoking on his balcony, despite the notifications in the newsletter that local bylaws prohibit smoking on balconies and in light of the landlord's testimony that there are no such bylaws I find the tenant, who has the burden to prove her claim, has failed to provide any evidence to confirm that there are such bylaws. In addition, the tenant has not provided a copy of the strata bylaws to confirm whether or not there is a strata bylaws prohibiting smoking.

While I acknowledge the tenancy agreement signed by the parties prohibits this tenant from smoking on her balcony, I find that since, by the landlord's testimony, the neighbouring tenant does not have such a clause the landlord must balance the rights and obligations of both tenants.

As one tenant does not have a restriction from smoking on his balcony I find at best the landlord can develop a protocol between the parties and the landlord has no ability to stop the neighbouring tenant from smoking without infringing on her obligations to that tenant. In the case before me, I find this matter is not a sufficient justification, on its own, to warrant any obligation on the part of the landlord to pay the tenant's moving costs.

Conclusion

For the reasons noted above, I dismiss the tenant's Application 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: October 25, 2012.

Residential Tenancy Branch