



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, CNC, OPT, MNDC, RR

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have applied for an Order of Possession for cause, and the tenants have applied for an order cancelling a notice to end tenancy for cause; for an Order of Possession of the rental unit or site; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order allowing the tenants to reduce rent for repairs, services or facilities agreed upon but not provided.

Both landlords and both tenants attended the conference call hearing on the first scheduled date, however the hearing did not conclude and was adjourned for a continuation of testimony. The parties each gave affirmed testimony over the course of the 2 days. The landlords also called 2 witnesses who gave affirmed testimony.

The parties provided evidentiary material prior to the commencement of the hearing, however during the course of the hearing one of the landlords stated that the tenants had not given the landlords a copy of some evidence. One of the landlords also stated that the Tenant's Application for Dispute Resolution had not been served on the landlords. The tenants testified that the landlords were served by registered mail on January 28, 2013 and provided a tracking number assigned by Canada Post. My determination of the issue is better described in the body of this Decision, however, my finding is that the parties have been served in accordance with the *Residential Tenancy Act*.

The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession for cause?
- Are the tenants entitled to an order cancelling a notice to end tenancy for cause?
- Are the tenants entitled to an Order of Possession of the rental unit or site?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on December 25, 2010 and the tenants still reside in the rental unit. Rent in the amount of \$950.00 per month is payable in advance on the 1st day of each month, although there is no written tenancy agreement, and there are no rental arrears.

The tenants rented the rental unit from the father of the named landlords. The landlords have provided a Supreme Court Order naming the landlords as joint committees of the estate of their father, and thereby become landlords of the tenants. The tenants were provided with a copy of the Supreme Court Order. The landlord believes that the landlords' father collected a security deposit from the tenants in the amount of \$500.00 in June, 2011.

The landlords issued a 1 Month Notice to End Tenancy for Cause on January 20, 2013, a copy of which was provided for this hearing. It is dated January 20, 2013 and contains an effective date of vacancy of February 28, 2013. The landlords served the tenants with the notice on January 21, 2013 by registered mail. The reasons for issuing the notice are stated to be:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- 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;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord further testified that the father had told the landlord that only 2 people were allowed in the rental unit. Having taken over as landlord in July, 2012 the landlord is not certain what may have been agreed to prior, but the tenants have a room-mate. The landlords' father also told the landlord that pets were not allowed and the tenants have 2 cats. The landlord assumes the tenants were told.

The landlord further testified that the rental unit had 20 visits by police in a year, although the landlord does not know why. A copy of a letter on RCMP letterhead has been provided which confirms that 20 files have been opened by the police from February, 2011 to October, 2012 for incidents involving the rental unit, but contains no specifics.

The landlord also testified that in July, 2012 another tenant from another unit approached the landlord about open cans of fluid left in the driveway or parking lot by the tenant after working on a vehicle. The tenant who complained had a child and was concerned that kids could get into fluids and cause illness or injury. The vehicle was not insured. The landlord spoke to the tenant about removing the fluids and the vehicle, but the tenant did not do so. The landlord followed up with a letter on September 20, 2012, a copy of which was provided for this hearing, advising the tenant that the vehicle would be towed by September 24, 2012 unless it becomes functional and insured, as evidence of the tenants' breach.

The landlord also testified that the tenants have caused damage to the rental unit, and further testimony will be provided by the landlords' witness.

With respect to the final reason for issuing the notice to end tenancy, the landlord testified that the tenants were provided with a copy of the Supreme Court Order and were instructed in writing on September 20, 2012 that rent was to be paid by paying into an account which was being provided by the landlords to the tenants effective October 1, 2012. A copy of the letter was provided for this hearing. The tenants ignored the instruction and continued to pay rent directly to the landlords' father. Also, a hearing was conducted by the director, Residential Tenancy Branch previous, wherein the tenants were warned to put rent into the appropriate bank account. The tenants ignored that order, although rent for the month of March, 2013 has been paid to the appropriate account. A copy of the decision of the director, Residential Tenancy Branch has been provided for this hearing. The decision states that the landlords had applied for an Order of Possession for unpaid rent or utilities and the tenants had applied for an order cancelling a notice to end tenancy for unpaid rent or utilities. The hearing was conducted on January 4, 2013 and the decision was completed on January 8, 2013. The landlord pointed out an excerpt in the Analysis portion that states: "I do however caution the tenants to ensure they pay rent to the correct landlords, as shown on the

landlords' application, from February 01, 2013. The tenants must inform the Ministry of Social Development that their landlord has changed to ensure the funds received by the Ministry are paid into these landlords account." The Conclusion portion on the same page dismisses the landlords' application and cancels the notice to end tenancy.

The other landlord testified that although the tenants' handwritten evidence states that the landlords inspected and took photographs of the rental unit in June, 2012, the landlord did not do so and has provided evidence showing that due to an accident, the landlord was off work and did not inspect the rental unit.

The landlord further testified that at no time did the tenants call the landlords for repairs needed to the rental unit.

The landlords' first witness is a maintenance employee of the landlords and has been since 2002. The witness testified to being in a neighbouring suite replacing the gyprock in the adjoining wall to the tenants' rental unit. The witness noticed that a peephole into the tenants' rental unit was visible and could see the tenant looking through the hole. Upon inspecting the tenants' rental unit the witness noticed damage in the unit. The damage included the hood over the stove, which was found lying on the stove with wires attached which may have been hot. The witness believes it had fallen off.

The witness also noticed that the hot water tank in the rental unit had been leaking and the water had seeped into the neighbouring suite. It had obviously been leaking for some time as evidenced by the stain on the floor. The tenant had told the witness that it had also leaked into the tenants' living room.

The witness replaced the hot water tank, which took a couple of days and was completed on January 23, 2013. The witness also replaced the hood over the stove, repaired the hole in the drywall behind the stove, replaced the front door, and made repairs to the toilet.

During cross examination, the witness was asked why it took so long to attend to the leaking hot water tank after the tenant had complained. The witness replied that the tenant never contacted the witness.

The landlords' second witness testified to being a tenant in the rental complex. On more than one occasion the tenant was drunk and belligerent. On one occasion, the witness' car battery died and the landlord had told the witness to use a battery that was in the garage belonging to the landlord to boost the witness' battery. While doing so, the tenant arrived and became accusatory. The witness told the tenant to mind his business, and the tenant punched the witness in the head. The witness pushed the

tenant up against a vehicle and told someone to call the police. The tenant's spouse came out clawing at the witness.

On another occasion, the witness had been on a restraining order from the witness' ex-partner and the tenant and ex-partner were friends. The parties all got together and it was agreed that if they combined the coupons that the witness had with some cash from the tenants, they could order 4 pizzas and all enjoy them. When the pizzas arrived, the tenant would only allow one of the 4 pizzas to be enjoyed by the party saying that the other 3 would be taken home. A disagreement ensued and the tenant punched the witness in the head 3 times. Since the witness was on a restraining order, the witness had to be careful about not involving police.

The witness resided in the rental complex for about 5 years and moved out 6 months ago.

The landlords submit that by having an unauthorized room-mate, the tenants have breached the tenancy agreement. By leaving vehicular fluids in the common parking area, the tenants have breached the tenancy agreement by seriously jeopardizing the health or safety or lawful right of another occupant. By causing damage to the rental unit, and failing to report issues that required the landlords' attention, the tenants have breached the terms of the tenancy agreement by putting the landlords' property at significant risk. And further, the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord by assaulting another tenant. The tenants have also failed to comply with the orders respecting the payment of rent to the new landlords, and the landlords request an Order of Possession.

The first tenant testified that the hood from over the stove fell off while the landlords' witness was working in the adjoining suite.

The tenant also testified that the police were at the rental complex several times because the tenant called them about other tenants in the complex selling drugs and alcohol to minors. The tenant was a drug addict but has recovered and does not tolerate such behaviour in the rental complex. On another occasion when the tenant called the police, a baby in another unit was crying and the babysitter was passed out drunk. The police were only called on one occasion about disturbances caused by the tenants.

The tenant further testified that rent for the month of March, 2013 has been paid and has been paid to the appropriate account. The tenants received information in November, 2012 about who to pay rent to.

The tenant also testified that prior to this tenancy the tenants had been living in their car and the landlord had 2 other tenants in the rental unit. The tenant believes the landlord wanted them to move in with the other 2 tenants in an effort to cause them to move out. They had owed the landlord about \$500.00, which the tenants paid on their behalf. So when the tenancy began, there were 4 people living in the rental unit. The other 2 tenants were partners and separated, and one moved out but the other kept sneaking him in, but eventually moved out. After they vacated, the landlord said only one room-mate would be permitted and the tenants have complied. The rental unit has 2 bedrooms.

The other tenant testified that the first landlord made a verbal agreement with the tenants about the room-mate that now resides in the rental unit with the tenant. That room-mate moved in during June, 2011 and was approved by the landlord. The new room-mate, the other tenant and the landlord (father) all attended the Social Services office together and they signed a Social Services rent agreement. Social Services now pays that person's share of the rent, being \$450.00 per month, and paid that person's share of the security deposit of \$250.00, which was all paid directly to the landlord (father).

The tenant further testified that the landlords' witness had told the tenant that a plate was supposed to be under the hot water tank to prevent seepage and there wasn't a plate there before the hot water tank was replaced. When asked if the tenants had notified the landlords about the leak, the tenant replied that it wasn't known that there was a leak.

Analysis

Firstly, with respect to the landlords' claim that the tenants did not serve the landlords with the Tenant's Application for Dispute Resolution and evidence, I have reviewed the testimony provided by the parties, and it is clear that the tenants have a tracking number that, in my experience is consistent with tracking numbers provided by Canada Post. Further, I note that the landlord who stated that no service had been effected testified that the tenants' written documentation is incorrect as it refers to an inspection conducted by one of the landlords on June 12, 2012. If the landlords had not been served, the landlords would not have that evidence. I do not find that the landlord has misrepresented the facts, but is confused about what paperwork was being referred to.

In the circumstances, I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

With respect to the notice to end tenancy, I have reviewed the document and I find that it is in the correct form and contains an effective date of vacancy that is consistent with the *Act*. Where a tenant disputes a landlord's notice to end a tenancy it is necessary for me to evaluate the reasons for ending the tenancy in comparison to the circumstances.

The first reason for ending the tenancy is stated to be that the tenants have allowed an unreasonable number of occupants in the unit/site. I find that the landlords have failed to establish that the number of occupants is unreasonable or not permitted. There is no written tenancy agreement before me to satisfy that claim, and the tenant testified that there were originally 4 tenants, and the undisputed testimony of the tenant is that only one room-mate resides there, and the landlord (father) had told the tenants that only one room-mate was permitted after the first 2 moved out, and the tenants have complied. The rental unit has 2 bedrooms and the tenants occupy one as husband and wife and the room-mate occupies the other. I do not find that arrangement to be unreasonable.

The second reason for ending the tenancy is stated to be that the tenant or a person permitted on the property by the tenant has unreasonably disturbed another occupant or the landlord. The landlords' witness testified that the tenant has on 2 occasions assaulted the witness by punching the witness in the head. The tenant testified that the police were there on so many occasions because the tenant called to complain about drug and alcohol sales to minors, and that the police were only called once as a result of actions of the tenant. I assume the two descriptions were of the same incident.

With respect to seriously jeopardizing the health or safety or lawful right of another occupant or the landlord, I find that it was very irresponsible of the tenant to leave such fluids from vehicle repairs lying about in the parking area of the rental complex. I have no evidence before me to determine whether or not the fluids were dangerous or toxic or posed any health or safety hazard, but it's clear that the landlords and the tenant who complained thought that it might be.

Although I agree that a leaking hot water tank could cause significant risk to the landlords' property, I consider the testimony of the tenant who did not know that it was leaking. I also consider the testimony of the landlords' first witness who stated that the tenant had advised that the living room carpet was also wet. Further, the tenant cross examined the witness asking why it took so long for the hot water tank repair after the tenant had complained to which the witness responded that the tenant hadn't

complained. In the circumstances, I find that the tenant did know the hot water tank was leaking and failed to notify the landlords.

With respect to the final reason for ending the tenancy, being non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order, I find that the landlords have failed to establish that there was an order under any legislation that the tenants failed to comply with. The landlords rely on 2 documents, the first being the Supreme Court Order appointing the landlords committees of the estate of their father. Nowhere in that order does it require or order the tenants to do anything. It is an order of the Court appointing them to look after their father's affairs. It is up to them to decide how to do that, which may include asking the tenants to pay rent to another account and providing a copy of the Supreme Court Order as a courtesy, and in no way does it require anything of the tenants. The landlords also rely on the Decision of the director, Residential Tenancy Branch dated January 8, 2013 which contains a caution in the Analysis section that the tenants ensure they pay rent to the correct landlords from February 1, 2013, and that they must inform the Ministry of Social Services of that change. That decision was a result of an application made by the landlords for an Order of Possession for unpaid rent and by the tenants for an order cancelling a notice to end tenancy for unpaid rent. The decision simply cancelled the notice to end tenancy and dismissed the landlords' application because the tenants had proven that rent was paid. It is clear that the tenants are aware of where to pay the rent as evidenced by the March, 2013 payment, but it is not an order under any legislation.

Although I am not satisfied that the landlords have met the burden of proof of all of the reasons for ending the tenancy as stated in the 1 Month Notice to End Tenancy, I find that the landlords have met the burden of proof respecting unreasonably disturbing another occupant, as well as putting the landlords' property at significant risk. Therefore, I find that the landlords are entitled to an Order of Possession for cause.

With respect to the tenants' application for a monetary order for damages, I find that the tenants have failed to establish any claim. There is no evidence before me that the tenants have suffered any damage or loss as a result of the landlords' failure to comply with the *Act* or the tenancy agreement.

Similarly, I find that the tenants have failed to establish that rent should be reduced for repairs, services or facilities agreed upon but not provided. There is no evidence before me that any services, facilities or repairs were agreed upon by the parties and not provided by the landlords.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$50.00 filing fee for the cost of the application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective on 2 days notice to the tenants.

I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

The tenants' application for an order cancelling the notice to end tenancy is hereby dismissed without leave to reapply.

The tenants' application for an Order of Possession of the rental unit or site is hereby dismissed without leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed without leave to reapply.

The tenants' application for an order that rent be reduced for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

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: February 27, 2013

Residential Tenancy Branch

