



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP, RR, FF, O

Introduction

This hearing was convened in response to an application filed by the tenant seeking:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary Order for compensation for damage and/or loss;
3. An Order that the landlord make repairs;
4. An Order that the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided;
5. An Order that the landlord comply with the Act;
6. To dispute a rent increase; and
7. Recover of the filing fee paid for this application.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Does the landlord have cause to end this tenancy? Should the landlord be compelled to make repairs and comply with the Act? Should the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided? Should the tenant recover the filing fee she has paid for this application?

Background and Evidence

This tenancy began on January 1, 2012. Rent was fixed at \$2,200.00 per month payable on the first of the month. Prior to the start of the tenancy, in December 2011 the tenant paid a security deposit of \$1,100.00 and a pet deposit of \$550.00. On February 21, 2012 the parties amended their tenancy agreement to include a one bedroom basement suite which the tenant was permitted to lease out and the parties agreed to a rent of \$2,600.00 per month payable on the first. The tenant's security

deposit was increased by \$200.00 with respect to the suite making a total deposit of \$1,300.00 paid.

Landlord's Claim: Notice to End Tenancy for Cause

On March 14, 2013 the landlord issued a Notice to End Tenancy for cause which the parties agreed was served by posting to the tenant's rental unit door on March 24, 2013. In that Notice the landlord seeks to end that tenancy because:

1. The tenant has allowed an unreasonable number of occupants in the rental unit;
2. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. The tenant has caused extraordinary damage to the unit or property;
4. The tenant has assigned or sublet the rental unit without the landlord's written consent.

With respect to ground No. 1 the landlord says there are 6 people living in the home when only the tenant and her 2 children were authorized to do so. The home is a single family home with 6 bedrooms. The landlord says the tenant is subletting bedrooms to 2 other people without the landlord's permission.

With respect to grounds No. 2 and 3 the landlord says the tenant has caused extraordinary damage to the rental property. The landlord testified that there is significant damage to the fixtures in the rental unit and the entire backyard needs to be replaced due to the number of pets the tenant is keeping.

The landlord says the tenant was allowed to have one pet, a Golden Retriever dog named Buddy however she now has 2 more dogs in the rental unit without the landlord's permission. The landlord submitted a print-out of the City of Surrey's by-laws which state that "No more than 2 dogs can be licensed to a Property at one time..." The landlord says the by-law officer has warned her that fines will be forthcoming. The landlord says she sent an email to the tenant asking her to remove the additional dog and she has failed to do so.

With respect to Ground No. 4 the landlord agrees that the tenant has not vacated the rental unit or sublet or assigned it to another tenant. This allegation is therefore withdrawn.

Tenant's Response

With respect to Ground 1 the tenant says she lives in the 6 bedroom home with her family and they have guests from time to time.

With respect to Grounds 2 and 3 the tenant says that landlord has allowed new tenants to move into the basement suite in September 2012 with 2 dogs and 2 cats. The tenant says that if the City of Surrey only allows 2 dogs per property, by allowing the downstairs tenants to have 2 dogs the landlord herself has violated the by-laws.

With respect to damage caused by the pets the tenant says all the pets in the rental unit use the backyard and it is impossible to tell whose pet caused what damage.

In further respect to Grounds 2 and 3, in response to the landlords allegations with respect to the tenant's dogs, the tenant says she has 2 dogs; the third dog was a dog she was "dog-sitting" and that dog is no longer on the property. The tenant says the second dog has been there since it was a puppy and the landlord and her property manager knew of the second dog and never expressed a concern about it.

Tenant's claim: Monetary Order for compensation for damage and/or loss

The tenant says that in the last hearing the landlord was ordered to make repairs and except for the repairs to the stairs she has not completed any of the repairs. The tenant is seeking to reduce her rent for these repairs.

The parties agree the backstairs have been repaired and the landlord has until May 31, 2013 to complete the remainder of the repairs. The landlord says these repairs are either in progress or will be undertaken shortly. The parties agreed that a condition inspection report was prepared at move-in but the tenant says the landlord never supplied a copy to the tenant.

The tenant is also seeking compensation in the sum of \$2,600.00 representing one month's rent. The tenant says that the landlord is attempting to "...persecute and intimidate me..." by neglecting to do repairs and maintenance and by serving "...fraudulent eviction notices in an effort to interfere with my tenancy..." The tenant submits that this is in breach of her covenant of quiet enjoyment.

The tenant says that the landlord has further breached her right to quiet enjoyment by not performing regular repairs in addition to issuing the Notice to End Tenancy. The

tenant says the landlord has been harassing her ever since she appeared as a witness in support of former tenants of the landlord.

Analysis

The tenant has made the following claims:

1. To cancel a Notice to End Tenancy given for cause;
2. A monetary Order for compensation for damage and/or loss;
3. An Order that the landlord make repairs;
4. An Order that the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided;
5. An Order that the landlord comply with the Act;
6. To dispute a rent increase; and
7. Recover of the filing fee paid for this application.

With respect claim No. 1 to cancel the Notice to End Tenancy the landlord bears the burden of proving cause to end this tenancy and I find that the landlord has failed in this regard.

The landlord testified that there are 6 people living in the home when only the tenant and her 2 children were authorized to do so. The tenant denies this and states that she has guests from time-to-time and there are 6 bedrooms in the home to accommodate guests. I find that the landlord has failed to bring sufficient evidence that to show who other than the tenant and her two children, are living in the rental unit and/or that there is an unreasonable number of occupants residing in the home. Further she has failed to show that the tenant has sublet bedrooms or is doing anything other than having guests from time-to-time.

The landlord testified that a further reason for wishing to end the tenancy is that there is significant damage to the fixtures in the rental unit and the entire backyard needs to be replaced due to the number of pets the tenant is keeping. Again, the tenant denies these claims and the landlord bears the burden of proving them. I find that the landlord failed to bring sufficient documentary, photographic or other evidence to show the damage to the fixtures and to prove that the tenant has caused damage. In addition, the undisputed evidence shows that the landlord has rented a basement suite in the rental building to tenants who also have pets. If the yard is damaged as the landlord states, the landlord has failed to bring sufficient evidence to show the damage and to show that the damage to the yard was caused by this tenant's pets as opposed to the other pets residing in the rental building.

The landlord submits that the tenant has more pets on the property than she is allowed. The tenant says she has always had 2 dogs and the third dog was simply being looked after and is gone. The tenant says the landlord and her property manager have always known about the second dog and have never objected to it. I accept the tenant's evidence in both regards. I accept this because the landlord has failed to show that there is a third dog in residence at all and also because she has failed to show that she took steps to warn the tenant that the second dog was not allowed and had to be removed. With respect to being in violation of the City of Surrey's by-laws, I accept the tenant's undisputed testimony that the landlord has rented the basement suite to tenants who have 2 dogs and 2 cats knowing that this tenant already has 2 pets in the rental building. If this number of pets is in violation of the City of Surrey pet by-laws as the landlord has stated, the landlord has contributed to this violation by allowing tenants to keep this number of pets in the rental unit.

Overall I am not satisfied that the landlord has brought sufficient evidence to show cause to end this tenancy. The tenant's application seeking to cancel this Notice is therefore allowed. The effect of this decision is that this tenancy shall continue as though no notice had been filed.

With respect to claim No. 2 for a monetary Order for compensation for damage and/or loss, No. 3 for an Order that the landlord make repairs and No. 4 for an Order that the tenant be allowed to reduce her rent for repairs, services or facilities agreed upon but not provided, the tenant made a previous application with respect to substantially the same issues as set out in this application. On April 10, 2013 the matters were determined I therefore dismiss her applications in this regard as *res judicata*.

With respect to repairs, the parties agree the back stairs have now been replaced as ordered and the remainder of the repairs were ordered to be completed by May 31, 2013. The landlord therefore still has time to make these repairs.

With respect to the tenant's claim that by issuing a Notice to End Tenancy the landlord has engaged in harassment, I do not find this to be the case. If a landlord believes there is cause to issue a Notice to End Tenancy it is their right to do so. If a tenant disputes the Notice it is up to the landlord to bring sufficient evidence to show cause. While the Notice to End Tenancy issued in this matter has not been successful, it remains the landlord's right to issue a Notice to End Tenancy and doing so would not likely be found to be harassment except perhaps in extreme cases where repeated notices are served and found to be without merit. The tenant's claim for \$2,600.00 in compensation is therefore dismissed.

With respect to No. 5 for an Order that the landlord comply with the Act with respect to the provision of the move-in Condition Inspection Report the landlord is directed to supply the tenant with a copy of the report by May 31, 2013.

With respect to No. 6 the rent increase, the landlord issued a Notice to Rent Increase on December 6, 2012 increasing the tenant's rent by 3.8% from \$2,600.00 to \$2,698.80 effective April 1. Although the Notice of Rent Increase form omits the year the increase is effective, it seems reasonable to me that the effective date of the increase is meant to be April 1, 2013.

With respect to rent increases the Act says:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3), or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-66.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Even though this tenancy began on January 1, 2012 and the rent was increased a month later on February 21, 2012, that increase was by way of a mutual agreement in which the rent was increased from to \$2,200.00 to \$2,600.00 because of a change in the nature of the rental unit. Given this amendment to the Tenancy Agreement, I find that it is reasonable to set the anniversary date of the commencement of this tenancy at February 21, 2013 however because rent is due and payable in advance on the first of each month March 1, 2013 would become the anniversary date for calculating the anniversary of the start of the tenancy for the purposes of rent increases. This means that a rent increase may take place anytime on or after March 1, 2013 and on March 1st each year thereafter. The evidence shows that the tenant was notified of this increase in a notice dated December 6, 2012. I therefore find that a rent increase effective April 1, 2013 in the amount of 3.8% complies with the requirements of the Act. As set out in Section 43(2) a tenant may not dispute a rent increase that complies with the Act and I find that this rent increase does comply with the Act. This claim is therefore dismissed.

As the tenant was successful in having the Notice to End Tenancy issued in this matter cancelled, I will allow her to recover the \$50.00 filing fee she has paid for this application. The tenant is at liberty to deduct \$50.00 from her next rental payment to recover this sum.

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 15, 2013

Residential Tenancy Branch

