Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PICAFLOR HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL OPL ERP OLC RR RP MNDC FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
b) To compensate the tenant for emergency and other repairs and for loss of quiet enjoyment;
c) To provide a retroactive rent rebate for repairs not done or facilities not provided as agreed; and to recover filing fees for this application.

Service:

The Notice to End Tenancy is dated June 19, 2013 to be effective August 31, 2013 and the tenants confirmed it was served by registered mail. The landlord confirmed the tenants served the Application for Dispute Resolution personally and by registered mail. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the Notice to End Tenancy was issued in good faith for the landlord's use of the property or has the tenant demonstrated that the notice to end tenancy for should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they are entitled to compensation for loss of quiet enjoyment, for loss of facilities withdrawn or not provided as agreed and for repairs not done? If so, to how much compensation are they entitled? Is the tenant entitled to recover filing fees for this application?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The tenant requested the co-tenant's name be

added to the Application as an amendment, the landlord had no objection so the amendment is made to add the second tenant to the Decision and Orders. There was a large volume of evidence provided for this lengthy hearing. Only the evidence relevant to the Decision is quoted here but it was all considered before the Decision was made. The undisputed evidence is that the tenancy commenced in September 2012 on a fixed term lease to expire on August 31, 2013. Rent is $1450 a month and a security deposit of $725 was paid. The landlord served a Notice to End Tenancy for the following reason:

a) The rental unit will be occupied by the landlord or the landlord's spouse or a close family member.

The landlord's representative said that his clients bought the 100 year old heritage type home and moved into unit 2. They find unit 2 is too small for them and they have had to store their belongings at the parents' home or at work so they want to move into the larger suite #4. In the hearing, they offered to switch suites with the tenants but the tenants declined. The layout of the house was described. Unit 4 occupies the second floor and part of the attic, Unit 3 shares the second floor, Unit 2 is on the main floor but also has the recessed porch, stairs and mailbox and there is a legal unit 1 in the basement. To the allegation that they are not residing in Unit 2, the landlord replied that they are both professionals working long hours but they are living in Unit 2. They state that this is their home and they intend to live in it as comfortably as they can. They submitted a letter from the City requiring them to comply with the bylaw that the home have two suites plus 3 housekeeping units which would share kitchen and bathroom or in the alternate apply for necessary permits to change it. They respect the tenants and made the offer to exchange suites, they have done the repairs as requested (except the roof which has complications) and they want to be in compliance with all by laws.

The tenants allege the Notice was issued in bad faith as the landlords want to renovate and collect more rent. They do not believe the landlords moved into unit #2; they provided a letter from another tenant detailing how she seldom sees or hears the landlords in Unit #2. They submit that the letter from the city was issued long after the Notice to End Tenancy. They ask the Notice be set aside for these reasons.

The tenants also request compensation for loss of quiet enjoyment as a retroactive rent rebate of $200 a month for 3 months, February, March and April 2013. They said there were 4 roof inspections and the one in April was not done although they were required to allow entry in an 8 hour time window. They said the repeated intrusions into their suite for roof inspection were partially done because of the black stain they had coming down their living room wall. Furthermore, they were requested to remove items from the balcony for inspection for insurance purposes, this took many hours and it had to be

done in the rain because of the timing; the contractor who added one support said that he actually did not need the items removed. In the hearing, they said that their living room which had the black stain coming from the roof comprised about one third of their suite and due to one tenant's medical problems, she felt she could not use the living room and they were unable to store books there.

The landlord said that all entries were legal for the purpose of repair, they happened about once per month and proper notice was given. He said that all repairs except the roof were done but the roof is very complicated as it has 3 layers of shingles as well as possible rotting wood. He said some of the roofing contractors felt unable to do it after the inspection so they had to get more than one inspection and they tried to minimize disruption to the tenants as much as possible.

The tenants also claim rent reduction of $100 a month to pay for a storage locker for their displaced belongings. They said that they were promised storage space in the laundry room for their items but when this owner bought the home, the storage space was abruptly terminated and they were given inadequate shelving space for storage. A letter from the previous owner states his policy was that the tenants were given storage room in the laundry room, including bikes, with no restrictions provided they were 2 feet from the boiler. The landlord said that storage space is still provided on shelves which they constructed in the laundry room. They do not allow bikes or storage on the floor due to potential flood hazard and to ensure the ability of contractors to access the mechanics such as furnace and boiler.

The tenants also request a bike rack be installed. In minutes from a meeting with the present landlord, the tenants were told they could store bikes under the deck but the landlord said that the tenant refused to use that bike rack unless certain conditions were met. The tenants also request a rent reduction of $75 a month for every month that the roof leak is not repaired plus $300 for the five months when repairs were not done as requested. They are concerned about a possible mould problem and say the windows also need repair. A doctor's letter attests to the health problems of one of the tenants and states that they could be caused by mould.

The landlord states that repairs were dealt with as a priority, all repairs to windows have been done and that the mould inspection report, done at the request of the tenants to alleviate concerns, shows that there is not an unhealthy amount of mould spores within the suite. The report in evidence states that there are low mould levels when compared to the outdoor baseline and suggests filters can alleviate respiratory problems which may arise from mould but also from pet dander, dust and pollen. The landlord pointed out that the tenant has cats. The landlord did not want to do the roof repair while the

tenants are in residence in their present suite because of the significant disruption in tearing off three layers of shingles and possibly the plywood before even beginning to put on the new roof.

Included with the evidence is the Notice to End Tenancy, the lease, letters, emails, submissions from the parties and photographs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have issued the Notice to End Tenancy in good faith and that the landlords have the firm intention to either occupy the unit themselves or have a close family member occupy it.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the intended occupancy. I find the landlord issued the Notice in good faith as they want to live in the unit themselves because they need the increased space. They further intend to comply with the City's bylaws and restore the home to the permitted use. As the landlord pointed out in the hearing, if the landlord does not use the home as stated, the tenants have recourse under section 51(2). I find the landlord's explanation regarding observations of their infrequent occupancy of unit 2 credible as they work long hours in their profession and the other tenant did say she had observed them from time to time and heard them doing laundry. I find the landlord has satisfied the onus, the tenancy is at an end on August 31, 2013 and the landlord is entitled to an Order of Possession effective August 31, 2013.

In respect to the claim for loss or reduction of storage in the laundry room, although the tenants' legal representative ably presented the case, I find insufficient evidence to support the tenant's claim. There is no provision in the lease for this storage space, the current owners continued the tenancy under the lease and not under some loose policy provisions that the former owner had. Furthermore, I find the landlord has provided organized storage on shelves in the laundry room and for bicycles under the deck. I find the minutes of the meeting on March 19, 2013 sets out these laundry room provisions and states that nothing is to be stored on the floor due to recent flooding. The minutes also state a bicycle parking is to be installed under the deck and the landlord said this was done but the tenants refused to use it for they wanted a secure bike rack also. In summary, I find the tenants have not proved on a balance of

probabilities that agreed upon facilities or storage was reduced so I find them not entitled to compensation for these items. I dismiss this portion of their claim.

Regarding the claim for disruption of their quiet enjoyment, I find the landlord acted legally in accordance with section 29 of the Act in giving the tenants notice and stating the purpose of the entry. While a contractor may have told them after the fact that they had not needed to move their belongings off the deck, I find the landlord's evidence credible that they had been instructed to have belongings removed for the purpose of insurance inspection and repair of this 100 year old home. I find one or even two entries per month for the purposes of inspection and repair by a new purchaser is not an unreasonable disturbance or disruption of their quiet enjoyment. I dismiss this portion of the tenants' claim.

However, in respect to the ongoing roof problem, I find the tenants have suffered a restriction in their living conditions due to the concern about the black stain in their living room. While it may not have been a health hazard, they did not understand it was not producing mould until June 26, 2013 when the report was done and one of the tenants had health issues which caused her increased concern so she felt she could not use this living space. The stain was there from the beginning of the tenancy and the roof is still not repaired. I find the tenants entitled to recover one lump sum of $300 as claimed for the five months that the repair was not done under the current ownership. As the tenancy is ending on August 31, 2013, I decline to order further repairs or that a bike rack be installed or grant rent reduction until the roof is repaired. I dismiss these portions of the tenants' claim.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on August 31, 2013. An Order of Possession is issued to the landlord effective August 31, 2013. I find the tenants entitled to a monetary order for $300 plus the filing fee of $50 for the reasons outlined above. I dismiss all other claims of the tenants 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: August 07, 2013

Residential Tenancy Branch