



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, LRE

Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement; Orders for the landlord to comply with the Act, regulations or tenancy agreement; and, an Order to suspend or set conditions on the landlord's right to enter the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The tenant had submitted late evidence and the landlord requested that it be excluded from consideration. I heard that the tenant submitted his evidence in response to the landlord's evidence package that he received 4 days prior to the hearing. I heard from the landlord that the landlord's evidence package was sent to the tenant via registered mail on September 16, 2013. As section 90 of the Act deems receipt of mailed documents five days after mailing, I found the tenant's testimony concerning receipt of the landlord's evidence package credible. Accordingly, I found that the landlord's evidence package was served upon the tenant less than five days before the hearing and was late as well.

As both parties had served late evidence upon each other, in addressing the landlord's request for exclusion, the landlord was asked whether an adjournment would enable the landlord an opportunity to review and respond to the tenant's evidence. The landlord indicated that she was prepared to respond to the tenant's late evidence during the hearing by way of verbal testimony.

In light of the above, I accepted and considered all of the evidence served upon the Branch and each other in reaching this decision.

Issue(s) to be Decided

1. Is the tenant entitled to monetary compensation from the landlord?
2. Is it necessary to issue orders to the landlord for compliance or to set conditions upon the landlord's right to enter the unit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence December 1, 2012. The tenant is required to pay rent of \$625.00 on the 1st day of every month. The rental unit is an apartment located on the top floor of a multiple unit building. The rental unit has a balcony for the exclusive use of the tenant. Other units have balconies including the units below and adjacent to the rental unit. The tenant has numerous potted plants on his balcony and some are suspended from the railing. The tenancy agreement does not expressly prohibit the tenant from having plants without his unit or on his balcony.

The tenant filed this Application for Dispute Resolution in response to a "Caution Notice to Tenant" issued by the landlord to him on August 7, 2013 (herein referred to as the caution notice). The caution notice provides the following narrative from the landlord.

It has come to our attention the plants that you have on your deck are causing significant damage to the building. The watering of the plants has caused irreversible staining to the siding of the building and the deck. The weight of the plants on the deck is dangerous. Please remove all of these plants immediately. If these plants are not removed by August 9, 2013 we will remove the plants and charge you for the cost of removal.

[reproduced as written]

The tenant was especially concerned about the last statement in the caution notice and feared the landlord would enter his unit and remove his possessions. The tenant seeks assurance that the landlord will not enter his rental unit and remove his plants and pots or planters. The tenant explained he suffers from mental health issues and that the landlord's statement in the caution notice severely stressed him. The stress experienced by the tenant is the basis for the tenant's monetary claim of \$200.00.

The landlord's agent appearing at the hearing acknowledged that the last statement in the caution notice message is contrary to the Act and explained that it was made in error by another agent or staff person.

After receiving the landlord's caution notice, the tenant gave the landlord a letter advising the landlord that he would refuse the landlord entry based upon the caution notice as was contrary to the Act. The landlord acknowledged that the landlord has not attempted to enter the unit to inspect or assess damage to the tenant's balcony but that an assessment was made from the unit below. Based upon the tenant's letter, the landlord is concerned that the tenant would refuse entry to the landlord in the future. The tenant explained that he made that statement due to the landlord's caution notice.

I heard consistent submissions from the parties that the landlord has not, in the past, entered the tenant's unit unlawfully. The requirements of section 29 of the Act [*Landlord's right to enter rental unit restricted*] were reviewed with the parties during the hearing.

Both parties wanted to deal with the issue of the plants on the tenant's deck. I continued to hear from the parties in an attempt to resolve this issue and future disputes. The landlord was of the position that all plants should be removed from the tenant's balcony as damage has already been seen on the deck covering of the balcony below the tenant's unit and to the stucco on the balcony dividers adjacent to the tenant's unit. The tenant rejected the landlord's position that there is damage to the building caused by the tenant having plants on his balcony but the tenant acknowledged some cleaning was required.

The landlord submitted that the sundeck below the tenant's unit is stained due to water coming off the tenant's deck after he over-watered his plants. The tenant acknowledged that the balcony below his had dirty water stains, but submitted that the stains have greatly improved with the recent rainfall. The tenant was agreeable to putting trays under the plants and not over-watering to avoid water flowing over his balcony. However, the tenant submitted that rain falls on his deck and flows over the balcony naturally.

The landlord also submitted that the stucco balcony dividers adjacent to the tenant's balcony are stained from the tenant's over-watering of plants and that the dividers adjacent to the tenant's unit are the only dividers stained at the building. The tenant submitted that staining on the stucco dividers is evident on numerous other balcony dividers at the building due to natural causes and the landlord is responsible for cleaning the dividers from time to time; however, the tenant was willing to clean any

staining that may have been caused by his gardening efforts. The landlord stated that the tenant must not attempt to clean the balcony dividers himself due to liability issues and Worksafe requirements.

After a considerable amount of discussion with the parties, the parties were agreeable to the following:

1. The landlord shall provide the tenant with a list of acceptable solutions for cleaning the vinyl deck covering of his balcony, in writing.
2. Within one week of receiving the above the tenant will:
 - a. permanently remove the plants, pots and any other materials used to hang or suspend plants from the balcony railing.
 - b. clean his deck covering with one of the solutions identified by the landlord;
 - c. dispose of the annual plants and place the soil from those plants in a sealed container;
 - d. move the remainder of the plants nearer the building so that they are under the roof over-hang; and,
 - e. place trays under the plant pots remaining on the deck.
3. The tenant shall ensure that any plants on the deck are not over-watered, whether that be by manual watering or by rainfall, so that water does not overflow the plant pot or tray underneath the plant pot.
4. The landlord will schedule and conduct an inspection of the tenant's balcony by way of obtaining the tenant's verbal consent or serving the tenant with a 24 hour written notice of entry, as provided under section 29 of the Act.

Analysis

The Act prohibits a landlord from seizing a tenant's possessions without a court order (Writ of Possession). The only exception to this requirement is where the tenancy has ended and the tenant has abandoned his possessions. As the tenancy is still in effect I make any further comments regarding abandonment.

I find the landlord's staff person who issued the caution notice erred in communicating to the tenant that the landlord would remove the tenant's plants from the balcony and dispose of them. I am satisfied that the landlord's agent who was present at the hearing is knowledgeable about the Act and is aware of the error. However, I feel it is prudent that the landlord inform or train its other staff accordingly so as to avoid future errors of this nature. Therefore, **I ORDER the landlord to ensure the landlord's agents or staff persons, such as resident managers or building managers, are made aware that it is contrary to the Act to seize or remove a tenant's possessions without a**

court order and must not communicate to a tenant that the landlord will do such a thing.

The Act does not prohibit a tenant from having potted plants on their balcony. The tenancy agreement executed by the parties does not prohibit the tenant from having plants within the rental unit or on the balcony. The landlord acknowledged that tenants are permitted to have potted plants within their rental unit. In the absence of any term prohibiting the tenant from having potted plants on the balcony I find a reasonable person would conclude that potted plants on the balcony do not violate the terms of the tenancy agreement or the Act. That being said, I also find that a reasonable person would not keep plants on the deck in such a way that there is a reasonable likelihood that damage to the balcony or other parts of the exterior of the building would result, or put other occupants at risk of injury or unreasonable disturbance. Therefore, **I find that the landlord must not prohibit the tenant from having potted plants on the balcony unless the landlord can show that keeping potted plants puts the property at significant risk of being damaged or puts other occupants at risk of injury or unreasonable disturbance.**

I find the disputed evidence insufficient to conclude that the tenant's activities have caused damage to the stucco and I make no orders prohibiting the tenant from having potted plants on his balcony. However, as a result of the discussions that took place during the hearing I am satisfied the tenant now understands and will ensure that the potted plants on the balcony do not overflow with water; the tenant clean the deck surface; and the tenant will remove the plants suspended from the railing. I am also satisfied that the landlord will inspect and monitor the tenant's activities with respect to keeping plants on the sundeck and, where necessary, give further instructions to the tenant to minimize potential for damage. Therefore, **I order both parties to comply with the agreed upon terms described in the Background section of this decision.**

With respect to the landlord's right to enter the rental unit, I am satisfied the landlord has not previously entered the tenant's unit unlawfully and I am satisfied the landlord is aware of the requirements of section 29 of the Act. It is important for the tenant to understand that he must not interfere with the landlord's right to enter where the landlord has complied with section 29 of the Act. Below, I have reproduced section 29 for both parties further reference:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Finally, I dismiss the tenant's monetary claim as I am not satisfied the erroneous caution notice is sufficient to award the tenant the compensation he is seeking. While I appreciate the tenant may be very sensitive given his mental health issues, an award for compensation should reflect the loss experienced by the average person. Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment provides example for finding a breach of quiet of quiet enjoyment. Examples of loss of quiet enjoyment include repeated or persistent threatening or intimidating conduct. I find the one erroneous statement in the caution notice does not meet the threshold to find a loss of

quiet enjoyment. In denying the tenant's claim for compensation for loss of quiet enjoyment the landlord is expected to conduct itself within the confines of the Act in the future to avoid a future claim for loss of quiet enjoyment.

Conclusion

The tenant's claim for monetary compensation has been dismissed; however, I have issued orders to both parties with this decision.

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 04, 2013

Residential Tenancy Branch

