



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNC, MNDC, FF, O

For the landlord OPC, MNSD, MNDC, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant seeks to cancel the One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord seeks an Order of Possession for cause; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

With regard to the tenants claim for money owed or compensation for damage or loss concerning the tenant's right to quiet enjoyment of the rental unit; I find that there has been a prior determination on this matter at a hearing held on January 20, 2014 where

the tenant filed a similar application outlining the same issues. Therefore, I am bound by Section 77 of the *Act* that states that, except as otherwise provided in the *Act*, a decision or an order of the director is final and binding on the parties. The tenant's claims were determined at the previous hearing and the tenant's application for monetary compensation for the loss of quiet enjoyment was dismissed. I find that the principle of *res judicata* applies, meaning that the matter has already been decided and is therefore final and binding on the parties. I do not have the authority to over-rule or make an alternate finding in regards to the determination made in the previous decision. Consequently this section of the tenant's application has not been heard or decided upon at this hearing held today.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss for other issues other than a loss of quiet enjoyment?
- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on September 15, 2013 for a fixed term tenancy that is not due to end until September 15, 2014. Rent for this unit is \$1,700.00 per month and is due on the 1st of each month in advance. The tenant paid a security deposit of \$850.00 on August 23, 2013.

The landlord testifies that this second One Month Notice to End Tenancy for cause was issued on January 25, 2014 and served upon the tenant on that day in person. The

Notice had an effective date of February 28, 2014. The Notice notifies the tenant that the landlord seeks to end the tenancy under two grounds:

That the tenant or a person permitted on the residential property by the tenant has

(i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

The landlord testifies that a previous hearing was held after the landlord had served the tenant with the first One Month Notice to End Tenancy for the same grounds. At that hearing held on January 20, 2014 the One Month Notice was set aside as the landlord had not met the burden of proof that the reasons given were sufficiently grave to provide cause for ending the tenancy. However, it was noted by the previous Arbitrator on that decision that the tenant wrongly denied access to the landlord on December 8, 2013 after the landlord provided proper notice that she wished to enter the rental unit to conduct an inspection. The Arbitrator noted that "a single incident of refusing proper entry to the rental unit is not sufficient to have significantly interfered with the landlord or seriously jeopardized the lawful right of the landlord. The Arbitrator further noted that they cannot consider in that hearing any acts by the tenant that occurred after the Notice was served on December 8, 2013. The landlord has given evidence that the tenant again refused her entry to the rental unit after proper notice was given in early January. This may be sufficient grounds to support a further Notice to End Tenancy for Cause".

The landlord testifies that as the tenant did refuse the landlord access to the unit on January 05, 2014 after proper Notice of Entry was provided to the tenant the landlord feels that the tenant has again significantly disturbed the landlord and prevented the landlord from carrying out their lawful right to inspect the rental unit once a month as indicated on the tenancy agreement. The landlord testifies that the landlord tried to

enter the unit but the key would not turn in the lock. The tenant later documented that she had held the lock to prevent the landlord entering the unit.

The landlord testifies that this occurred prior to the hearing held on January 20, 2014. At that hearing the tenant did agree to allow the landlord to enter the unit on January 25, 2014 and the landlord was able to enter and inspect the unit on that date.

The landlord testifies that the tenant has altered the tenancy agreement by checking off the box that indicates that storage is included in the rent. The landlord refers to her copy of the tenancy agreement where the storage box is unchecked however on the tenants copy this box is checked. The landlord testifies that the tenant has unlawfully checked this box after the tenancy agreements were signed. The landlord testifies that she had some of her belongings stored in a room in the unit and this was explained to the tenant at the start of the tenancy. The landlord testifies that she has since removed all her belongings from the unit.

The landlord testifies that when she went to the unit to collect her belongings she found that the tenant had put in a shower without the landlords permission. This act of the tenants upset the landlord which led to the tenants accusations of "strange behaviour" from the landlord. The landlord seeks an Order of Possession effective on April 15, 2014.

The landlord testifies that at the last hearing the tenant was awarded \$25.00 the tenant withheld this from her rent which did not give the landlord time to cancel the tenants postdated rent cheque held by the landlord's bank and the landlord incurred a \$7.00 bank fee. The landlord seeks to recover this from the tenant. The landlord testifies that she has incurred costs to attend at the unit with ferries and gas and a loss of earnings. The ferry and gas costs have added up to \$392.25 and the landlord seeks to recover \$229.00 for time off work.

The landlord seeks an Order to keep the security deposit to offset against the landlords monetary claim.

The tenant disputes the landlord's claims. The tenant testifies that at the last hearing the tenant was ordered to deduct the \$25.00 for half the filing fee from her next rent payment. The landlord should have obtained that cheque from her bank and returned it to the tenant as the tenant had issued a new cheque to the landlord.

The tenant disputes the reasons given on the One Month Notice. The tenant testifies that she denied the landlord entry prior to the hearing as the landlord had not provided proof that her insurance company required monthly inspections. The tenant testifies that since the hearing took place on January 20, 2014 the tenant has not refused entry to the landlord when proper notice has been given. The tenant testifies that she also thought that the landlord had no right to entry the unit after the tenant had filed for dispute resolution until the matter had been settled through the hearing process. The tenant testifies that there has always been conflict with the landlord as this unit was rented as an unfurnished unit however the landlord had kept some of her belongings stored in the unit.

The tenant disputes that she checked of the storage box on the tenant's copy of the tenancy agreement and that this was done by the landlord. The tenant disputes that the tenant and landlord had discussed the landlord keeping some belongings in the unit. The tenant testifies that she rented this unit in its entirety and as it was rented as unfurnished the landlord should have removed all her belongings prior to the tenancy starting.

The tenant testifies that the landlord's behaviour was strange. On one occasion the landlord requested to sleep over at the unit and accused the tenant of taking the landlords hand held weights and painting a mirror. The tenant testifies that the weights belonged to the tenant and she did not paint a mirror. The tenant seeks to have the One Month Notice set aside.

Other discussions took place concerning the tenant's application for compensation. It was explained again to the tenant that these matters had previously been heard and that res judicata applies.

The tenant has also applied for compensation from the landlord for a loss of earnings to a total amount of \$1,500.00. The tenant testifies that she has had to take time off work to be at the house because the landlord wanted to enter the house to collect her belongings and to do inspections once a month. The tenant testifies that she has lost earnings for three months dealing with the landlord. The tenant testifies that she had to take two days off work when the landlord was coming to collect her belongings. The landlord arrived around 1.00 a.m. and left around 2.00 a.m. on both dates which resulted in a loss of earnings for the tenant for the two days. The tenant testifies that she could not return to work after the landlord had been to the house as the landlord had made the tenant feel emotionally distressed.

The tenant testifies that the landlord was notified of a roof leak around the skylight on January 25, 2014. Many emails sent to the landlord also discuss this leak and the tenant's request for repairs to be made. The tenant testifies that to date the landlord has still not made the repairs.

The landlord testifies that she has been in contact with the roofing company who did the roof as it is still under warranty. The landlord agrees to chase up this roofing company to look at and make any necessary repairs.

Analysis

Having heard the parties' testimony and having reviewed the evidence presented I find the parties are experiencing ongoing discord that has not supported a successful tenancy. There is clear animosity from both parties evident by the tone of the emails and discussions during the hearing. However, I have thoroughly reviewed the evidence before me and find that at the previous hearing the Arbitrator did indicate in their

decision that if there were further attempts to deny the landlord access to the unit it may result in further grounds to end the tenancy. However as the tenant had denied the landlord access on January 05, 2014 prior to the hearing the tenant was not aware at that time that in denying the landlord further access it may be grounds to end the tenancy. Since that time the tenant has allowed the landlord access to the unit and I find therefore that the landlord has insufficient evidence to meet the burden of proof that the reasons given on the One Month Notice to End Tenancy are significant enough for the Notice to Be upheld and for the landlord to be issued with an Order of Possession.

Should further conflict occur between the parties now that warnings have been given to the tenant concerning entry, the landlord is at liberty to serve the tenant with a further One Month Notice to End Tenancy. However the parties must act in a reasonable manner respecting each others rights as landlord and tenant and to that effect I have cautioned the parties to have minimal contact unless in the course of the tenancy it is required.

The tenant's application to cancel the One Month Notice is therefore upheld and the Notice is set aside.

The landlord's application for an Order of Possession is therefore dismissed.

With regard to the landlord's application for a Monetary Order for money owed or compensation for damage or loss; the landlord seeks to recover the cost of ferries, gas and time off work to an amount of \$621.25. I have insufficient evidence before me that the tenant did falsify the tenancy agreement by adding in storage and that it was not simply an oversight when both agreements were filled in. There is no provision under the *Act* for amounts to be awarded to the landlord for any costs incurred for the landlord to travel to the rental unit. If the landlord is an absent landlord and does not live in the local area then the tenant cannot be held responsible for the landlords travel costs to remove any belongings left in the unit, to carry out inspections of the unit, for service of any documents or for any time off work to deal with tenancy issues. This section of the

landlords claim is therefore dismissed. The landlord seeks to recover a \$7.00 bank fee incurred after the tenant was awarded half the filing fee at the previous hearing. The landlord should have been aware that the tenant was going to deduct this amount from the rent as ordered at that hearing and should have taken steps to ensure that the tenant's rent cheque was not processed by the landlord's bank. The landlord must therefore bear the cost of any bank charges incurred and her claim for \$7.00 is dismissed.

As the tenancy is continuing at this time the landlords claim to keep the security deposit is dismissed.

As the landlord has been unsuccessful with this application the landlord must also bear the cost of their filing fee.

With regard to the tenants application for lost earnings and time off work; I find the tenant must bear equal responsibility to the breakdown in relationship between the parties. If the landlord has issued the tenant with a Notice to enter the unit it is the tenant's choice to be present at the time of entry. The landlord has a right to enter the unit without the tenant being present. I acknowledge that due to the conflict between the parties that the tenant wanted to be present when the landlord removed her belongings and for inspections; however, as this was the tenants choice it would be unreasonable if I compensated the tenants lost earnings due to this. This section of the tenants claim is therefore dismissed.

With regard to the tenants concerns over repairs to the skylight, I find the landlord has had ample time to organize a repair and has failed to do so. However, I accept that as this roof is under warranty that the landlord wants to wait for the original contractors to make this repair. To that affect I Order the landlord to ensure an inspection and repair, if required to be completed, on the roof no later than five days after receiving this decision.

At the hearing the parties agreed that if the tenant finds alternative accommodation prior to the end of fixed term tenancy that the parties will sign a mutual agreement to end the tenancy and the tenant will provide a minimum of two weeks' notice to the landlord.

Conclusion

The tenant's application is granted in part and the Notice to End Tenancy for Cause dated January 25, 2014 is cancelled. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover half the filing fee of **\$25.00** and may deduct that amount from her next rent payment when it is due and payable to the landlord.

The tenant's application for a Monetary Order is dismissed without leave to reapply.

I Order the landlord to investigate and make any required roofing repairs no later than five days after receiving this decision.

The landlords claim is dismissed in its entirety 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: March 25, 2014

Residential Tenancy Branch

