

DECISION

Dispute Codes: CNC OPC MNDC OLC PSF 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 cause pursuant to section 47;
- b) To compensate the tenant for the persistent disturbance of his peaceful enjoyment contrary to section 28 of the Act and for withdrawal of necessary facilities of hydro contrary to section 27 of the Act;
- c) To order the landlord to comply with the Act; and
- d) To recover the filing fee for this Application.

Service:

The Notice to End Tenancy is dated January 6, to be effective February 6, 2014. The effective date on the Notice is automatically corrected to February 14, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The parties testified that rent is payable from the 15th of each month. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and again personally with evidence and the landlord agreed they received it. 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 there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy for cause 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 the landlord significantly interfered with his peaceful enjoyment contrary to section 28 of the Act and withdrew the essential service of hydro contrary to section 27 of the Act? If so, to how much compensation has the tenant shown entitlement?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a very contentious hearing with both parties interrupting each other and needing reminders often to be calm and listen to the other party first on an issue. Nevertheless both parties had full opportunity to provide their evidence and submissions.

The undisputed evidence is that the tenancy commenced in August 2013 with no written tenancy agreement, rent is \$400 a month and a security deposit of \$225 was paid. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- b) The tenant has seriously jeopardized the health or safety or other lawful right of another occupant or the landlord and put the landlord's property at significant risk
- c) The tenant has engaged in illegal activity that adversely affects the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord.

When asked to explain the above grounds for ending the tenancy, the landlord said the tenant smokes in the suite jeopardizing the health of the landlord's family as the smoke penetrates the building; he said the tenant makes a lot of noise by banging on the walls when the landlord's children are playing upstairs and the City has issued him a letter saying he can only have one suite in the building and the tenant's suite is a second suite. He said there was no tenancy agreement with a no smoking term but he had asked the tenant not to smoke.

The tenant said he was illegally evicted on March 3, 2014 by the landlord putting all his belongings out in the rain. The landlord pointed to an unsigned letter (in evidence) which the tenant said he wrote as a proposal to move out by March 2, 2014; however the tenant said the landlord was not willing to fulfill the promise of giving him \$225 security deposit so the agreement was never made. The landlord then said that the tenant had moved his own goods out. The tenant denied this vigorously and said he was bringing a separate application with legal help for illegal eviction but meanwhile he wants his suite back. He is living on the street currently.

He said that the landlord wanted him out since January and he has been harassed since then by the landlord cutting his hydro power four times. Each time he had to have the Police attend to get it turned back on. The power was off for 7 hours January 12th or 13th, then all night the next day because the Police could not get the landlord to answer the door to turn it back on. It was turned off again for 5 hours and another time for a few hours. He said he had had no problems like this until January so it was unlikely it was the result of breakers being overloaded as the landlord claimed. The landlord said the

power outage was caused by a pole being down one time and the other times by an overload on the breakers.

The tenant also claims compensation for significant disturbance of his peaceful enjoyment for five and a half months. He said the landlord's parents make noises at 1:00 a.m., 5:00 a.m. and 7:00 a.m. and he has endured this for 5 and a half months. He said it seems deliberate banging over his head; he says he does snore and maybe they banged to wake him up from snoring but it significantly interferes with his rest.

Included with the evidence is a copy of the Notice to End Tenancy for cause and a subsequent one for non payment of rent dated February 4, 2014, some statements and a disk of evidence supplied by the tenant. The tenant said he tried to pay his rent in February but the landlord would not accept it as he wants him out. He said he is willing to move if the landlord gives him the proper two month notice to reclaim the property for his own use.

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 good cause to evict the tenant.

I find the evidence of the landlord insufficient to end the tenancy for the causes stated, namely, that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or jeopardized their health or well being. I find there is no written tenancy agreement prohibiting smoking in the unit and there are no by-laws prohibiting a person from smoking in his own unit. I find the letter from the City in evidence is regarding registering secondary suites for utility costs and not relevant. I find insufficient evidence provided by the landlord that he has good cause to end the tenancy. I hereby set aside and cancel the Notice to End Tenancy dated January 6, 2014.

In respect to the tenant's claim for compensation for overhead noise that significantly disturbs his reasonable enjoyment, I find that the weight of the evidence is that there are ongoing noises associated with normal living in a three storey home. However, I find insufficient evidence to support the tenant's allegation that this was deliberate, ongoing noise to disturb his reasonable enjoyment. Therefore I dismiss this portion of the tenant's claim without leave to reapply. I decline to make a finding on the illegal eviction

as the tenant said he is bringing a separate application with legal help and needs to prepare all his evidence as the landlord is denying this occurred.

Regarding the hydro outages, I find the tenant was deprived of the service of hydro for approximately 36 hours over 4 days. Although the landlord claimed this was due to a pole being down and overloading of breakers, he provided no objective evidence to support his statements. As this occurred in January after the landlord served a Notice to End Tenancy and the relationships between the parties deteriorated significantly, I find it more probable that the landlord did turn off the hydro. The fact that the police had to be called to have it restored on four occasions also supports the tenant's evidence. I find the tenant entitled to a rebate of rent pursuant to sections 27 and 65 for the withdrawal of the essential service of hydro for periods over 4 days. I find him entitled to \$58.06 (\$14.51 day x 4 days) rebate. As the tenant has not paid February rent yet, he may deduct this amount plus the filing fee from the rent owing (total \$108.06).

If the tenant does not pay the rent for February 2014, the landlord is at liberty to make Application to end the tenancy.

Conclusion:

THE NOTICE TO END TENANCY DATED JANUARY 6, 2014 IS HEREBY CANCELLED. THE TENANCY IS REINSTATED AND AN ORDER OF POSSESSION IS ISSUED TO THE TENANT EFFECTIVE TWO DAYS FROM SERVICE.

I HEREBY ORDER THE LANDLORD TO GIVE THE TENANT A KEY TO ALLOW THE TENANT TO REPOSSESS THE UNIT IMMEDIATELY AND TO ACCEPT THE REDUCED RENT FOR FEBRUARY IMMEDIATELY(with rebate of \$108.06 as noted above) AND FOR MARCH WHEN DUE AND TO PROVIDE RECEIPTS TO THE TENANT.

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 05, 2014

Residential Tenancy Branch