



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, MNDC, RP, PSF, LAT, RR, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order permitting more time than specified in the *Residential Tenancy Act* to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order that the landlord provide services or facilities required by law; for an order authorizing the tenant to change the locks to the rental unit; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The hearing did not conclude on its first day and was adjourned for a continuation of testimony. On both days of the hearing, the landlord and the tenant attended, and each gave affirmed testimony. The tenant provided evidentiary material to the Residential Tenancy Branch and to the landlord in advance of the hearing. The tenant also called 5 witnesses who each gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the tenant withdrew the application for an order that the landlord provide services or facilities required by law.

It was also ruled during the hearing that the tenant did not require more time than specified in the *Act* to dispute a notice to end tenancy. The tenant's application was filed on March 13, 2014, amended on March 19, 2014 and the notice to end tenancy was served on March 8, 2014 by leaving it in a conspicuous place. The *Act* states that documents served in that manner are deemed to have been served 3 days later, which I find is March 11, 2014. The *Act* also specifies that the tenant must file the dispute

within 10 days of service, and although the first application did not include a request for an order cancelling the notice to end tenancy, it did include an application for more time to dispute the notice. Even if the latter application only is considered, the last day to make the application would be March 21, 2014. I find that the tenant has complied with the *Act*, no more time is required, and that application is hereby dismissed.

Issue(s) to be Decided

The issues remaining to be decided are:

- Should the notice to end tenancy for cause be cancelled?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for cleaning supplies, damaged kitchen pots and loss of enjoyment of the rental unit?
- Has the tenant established that the landlord should be ordered to make repairs to the unit, site or property?
- Should the tenant be authorized to change the locks to the rental unit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agree that this month-to-month tenancy began on June 15, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$595.00 per month is payable in advance on the last day of the previous month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$297.50 which is still held in trust by the landlord.

The parties also referred me to a previous dispute resolution hearing that was heard by me on March 17, 2014 and resulted in a Decision dated March 28, 2014. In that dispute, the tenant had applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords make emergency repairs for health or safety reasons; for an order that the landlords provide services or facilities required by law; and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The hearing resulted in a monetary order in favour of the tenant in the amount of \$297.50, being one half of a month's rent for the inconvenience, inclusive of pain, suffering and humiliation caused by a drainage problem from March 9 to 17, 2014 and

no hot water for 3 days from February 2 to 4, 2014. I also ordered the landlord to comply with Section 29 of the *Residential Tenancy Act*, to retain the services of a plumber to snake the kitchen sink and bathtub to ensure no drainage problems will persist, and to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept. The tenant's applications for an order that the landlord provide services or facilities required by law and for an order reducing rent for repairs, services or facilities agreed upon but not provided, with respect to parking were dismissed.

The landlord testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on March 8, 2014, and a copy has been provided by the tenant. The landlord testified that the door of the rental unit was open and the landlord placed the notice on the floor inside the rental unit, but did not go into the rental unit. The notice is dated March 8, 2014 and contains an expected date of vacancy of April 8, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
 - put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord;
 - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the illegal activity refers to a no smoking rule within 10 feet of the building. The previous landlord told the landlord that it was a non-smoking building. The landlord received 3 reports of an odor of marihuana and lost a prospective tenant about 3 months ago as a result. Three of the landlord's maintenance people also complained to the landlord about the smell inside the rental unit. Also, while the landlord was on the property, a cigarette butt landed on his head which he states came from the tenant's balcony.

The landlord further testified that the tenant is hateful toward the landlord and the building and he is afraid of her; he fears damage. The tenant is annoying other tenants by knocking on their doors to ask for cigarettes and they've complained. Also, the tenant is always accompanied by 2 men who the landlord has witnessed are intimidating to other tenants and hang around. They interfered with the landlord when

he was trying to fix the sewer problem, getting in the way. The landlord told the tenant to leave but she returned with a camera. The tenant also told the landlord that she will harass him until he drops dead, and stated that the tenant mentioned losing her temper during the last hearing and testified that that's part of what she said. Further, another tenant told the landlord that the tenant wouldn't let her out of her car, and the landlord's maintenance people have told the landlord that the rental unit is at risk due to it being very dirty.

With respect to the notice to end tenancy, the tenant testified that she quit smoking on February 2, 2014 and never threw butts off the balcony. The tenant smells marihuana as well, but testified that it's not from her unit. The tenant's unit is the first door at the top of the stairs.

The tenant is not hateful of the landlord or the building. The tenant only got angry with the landlord for not doing the required repairs. Further, the tenant's friends don't talk to other tenants. One is a driver for the tenant and the other she values as a husband. They attend with the tenant when paying rent in cash to witness the payment and to ensure that the landlord issues a receipt. On one occasion the landlord said that he'd put a receipt in the tenant's mailbox and the tenant had to call to get one.

The tenant also testified that 3 or 4 months ago the tenant offered to buy cigarettes from other tenants but denies harassing anyone. With respect to the incident the landlord testified to of refusing to let another tenant get out of her car, the tenant testified that she stood by a pillar and asked why the other tenant was parked in the tenant's spot. The other tenant was yelling at another tenant. The tenant told her not to yell at others and she got mad. The tenant stepped away from her and she drove away recklessly and dangerously. The tenant was not in her way.

The tenant also denies that the rental unit is really dirty and stated that the landlord's claim is a total lie.

The tenant testified that the claim for a monetary order is in the amount of \$234.00 for cleaning supplies and a pot and a pot belonging to a friend that got ruined from the plumbing problems. The pots cost about \$100.00 each and \$34.00 is for cleaning supplies. The pots have not been replaced yet and no receipts for cleaning supplies have been provided. With respect to loss of enjoyment of the rental unit, the tenant testified that she didn't know what amount to put in the application and leaves it to this tribunal to determine its worth.

The tenant further testified that 2 floods have occurred from the kitchen sink drain in the rental unit since the last hearing. Water was all over and the tenant called the landlord then the maintenance guy and left messages, but no one showed up. The day after the second flood, a maintenance person showed up and called Roto-Rust. The Roto-Rust fellow didn't look at anything and went to the neighbor's to snake from that side because it flooded as well.

The tenant also applies for rent to be reduced for loss of use of the rental unit due to the flooding and odor, and again leaves it to this tribunal to determine the amount. The landlord has not snaked the kitchen sink, and it backs up with feces, a mess and a disgusting smell. Photographs of the backed-up water have been provided.

The tenant also called 5 witnesses who had each provided letters to the tenant that have been entered into evidence. Each of the witnesses affirmed that the contents of the letters were true. The first witness testified that he has no personal knowledge of the landlord entering the tenant's rental unit to serve the notice to end tenancy, but the tenant told the witness that.

The second witness affirmed that 2 letters provided were true, and that the tenant had told the witness that the tenant's mailbox had been tampered with. The witness also testified that she had not seen the tenant over the winter, but has now lost a tremendous amount of weight, has bags under her eyes, greyish skin and scratches red dots over her arms, and looks very sad. The witness also testified that she uses a cane and on May 5, 2014 the witness was at the rental unit and her knee gave out. The witness grabbed the rail but the rail wasn't secure and the witness fell, broke a tooth, hit her head and the paramedics came. The rail is still not secure today.

Another witness testified that he observed the kitchen sink overflowing, and the last time was around Easter.

In rebuttal, the landlord testified that everything the tenant has said is a lie.

Analysis

Where a tenant disputes a notice to end tenancy the onus is on the landlord to prove its validity which can include the reasons for issuing it. In this case, I have reviewed the notice to end tenancy and I find that it is in the approved form, but does not contain an address of the rental unit that the landlord wants the tenant to move out of. Further, it

contains an expected date of vacancy that is not consistent with the *Residential Tenancy Act*, and having served it on March 8, 2014, I find that the effective date of vacancy cannot be sooner than April 29, 2014. With respect to the reasons for issuing the notice, I am not satisfied that the landlord has established that the tenant or any persons permitted on the property by the tenant have engaged in any illegal activity. With respect to the other reasons for ending the tenancy as quoted in the notice, the landlord stated that everything the tenant says is a lie but has not provided any evidence at all. No written complaints by other tenants have been provided, nor have any been called to testify. The tenant's witnesses and their statements have at least partially corroborated the tenant's testimony, and I do not accept that everything the tenant said is a lie. The tenant has admitted to losing her temper on one occasion with the landlord for failing to make required repairs. I have reviewed the Decision made on March 28, 2014 and it's clear that the landlord was ordered to snake the kitchen sink and has still not had that repair done. I therefore find that the landlord has refused to provide a rental unit consistent with the *Act* or the tenancy agreement, and I accept that the only disturbance that the landlord has established is the incident where the tenant has admitted to losing her temper due to the landlord's inactions, and the landlord has failed to establish that the notice should be upheld.

With respect to the tenant's application for a monetary order in the amount of \$234.00 for ruined pots and cleaning supplies, I find that the tenant has failed to establish any of those costs. I am satisfied, however, that the tenant has established a monetary claim for loss of enjoyment of the rental unit. On March 28, 2014 I ordered the landlord to retain the services of a plumber to snake the kitchen sink and bathtub to ensure no drainage problems will persist, and to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept. The landlord has failed to do so and has had almost 2 months since receipt of that Decision. I also accept the testimony of the tenant and witnesses that a foul odor still exists. Having found that the tenant had established a monetary claim in the amount of half a month's rent in my previous Decision for the same drainage issue and no hot water in the rental unit, I find that the tenant is entitled to the same for loss of enjoyment of the rental unit for April and May, 2014. I hereby grant a monetary order in favour of the tenant in the amount of \$595.00 and order that the tenant be permitted to reduce rent for a future month or otherwise recover the amount.

Again, I order the landlord to retain the services of a qualified plumber to snake the kitchen sink and bathtub in the rental unit to ensure no drainage problems will persist, and to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept. I further order the landlord to repair the railing and ensure it is properly secured. I order that such repairs be completed by June 15,

2014 or the tenant will be at liberty to reduce rent by 50% in July, 2014 and for each month or partial month thereafter until completed.

With respect to the tenant's application for an order that the tenant be authorized to change the locks to the rental unit, I am not satisfied that the landlord has breached my previous order and I dismiss the application.

Conclusion

For the reasons set out above, the notice to end tenancy dated March 8, 2014 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$595.00, and I order that the tenant reduce rent for a future month by paying no rent, or otherwise recover the amount.

I hereby order the landlord to repair the railing and ensure it is properly secured, and to retain the services of a qualified plumber to snake the kitchen and bathtub drains to ensure no drainage problems will persist, and to ensure that the tenant is given the notice of such entry as per Section 29 of the *Act*, and that the appointment is kept. I order the landlord to ensure the repairs are completed by June 15, 2014. If the landlord fails to do so, the tenant will be at liberty to reduce rent by 50% in July, 2014 and for each month or partial month thereafter until completed.

The tenant's application for an order that the tenant be permitted to change the locks to the rental unit is hereby dismissed.

These orders are final and binding and may be enforced.

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 27, 2014

Residential Tenancy Branch

