Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, OLC, ERP, RP, PSF, LRE, LAT, FF, O

Introduction
This hearing dealt with the tenants' claims for orders compelling the landlord to comply with the Act, regulation or tenancy agreement; make emergency repairs to the rental unit; make repairs to the rental unit; provide services or facilities required by law; to suspend or set conditions on the landlord's right to enter the rental unit; and to pay financial compensation to the tenants. Their claim was subsequently amended to add their adult son as a party and to add requests for orders setting aside a 1 Month Notice to End Tenancy for Cause and to allow the tenants to change the locks. They also increased the amount of financial compensation sought.

The landlord acknowledged receipt of the application for dispute resolution and the amended application for dispute resolution.

The tenants files four packages of evidence with proof of service of each package upon the landlord. The landlord also acknowledged receipt of this evidence.

The landlord filed one evidence package on July 16. The tenants admitted receipt of this evidence package.

The landlord filed a second package of evidence on July 23. The landlord admitted that she did not serve this evidence on the tenants. She was advised that because she did not serve this evidence on the tenants it would not be considered.

After the hearing the tenants filed some additional material. As there was no evidence that a copy of that material had been served on the landlord, it will not be considered as evidence on this hearing.

Issue(s) to be Decided

- Is the 1 Month Notice to End Tenancy for Cause dated June 13, 2014 valid?
- Are the tenants entitled to any financial compensation from the landlord and, if so, in what amount?
- Should a repair order be made and, if so, on what terms?
- Should an order restricting the landlord's right to enter the rental unit be made and, if so, on what terms/
- Should an order be made allowing the tenants to change the locks on the rental unit?

Background and Evidence

This tenancy commenced February 15, 2012 as a one year fixed term tenancy. The agreement was that the monthly rent would be $2200.00 to be paid on the first day of the month.

The parties entered into a new one year fixed term tenancy agreement commencing February 15, 2013 and ending February 14, 2014. The terms of the written tenancy agreement were that the tenancy would continue thereafter as a month-to-month tenancy. The monthly rent was increased to $2300.00; all other terms of the tenancy agreement remained the same.

The tenancy agreement was renegotiated in the winter of 2014. Effective February 15, 2014, the rent was increased to $2350.00 payable on the 15th day of the month. It is a month-to-month tenancy.

The rental unit is one unit in a three unit house. At the present time the only other occupants of the house are the landlord and her six year old daughter.

There was a prior hearing between the parties which dealt with the tenants' application for orders compelling the landlord to pay compensation to the tenants for damage or loss; to comply with the Act, regulation or tenancy agreement; to make repairs to the rental unit; and to allow the tenants to reduce the rent for repairs, services or facilities agreed upon but no provided. I was the arbitrator that heard the application. That hearing commenced October 30, 2013 and was continued on December 3, 2013. The decision dated January 3, 2014 awarded partial monetary compensation to the tenants. Based on the evidence of the tenants at that hearing that they had fixed everything that required repairs no repair order was made.

Sometime after Christmas of 2013 water started coming in the south wall of the room referred to by the tenants as the wine room, by the ceiling. There was enough water that the MDF baseboards and door frame swelled up and the drywall bubbled. The landlord had a plumber come in to look at the situation. He cut open the wall to see if anything was leaking behind the wall. It was not. Two holes, each about three feet by one foot was left open for about eleven weeks until it was repaired as part of a larger remediation project.

The tenants testified that the holes exposed the brick wall behind the gyproc wall which was covered in mold and moisture. They testified that this room is primarily used by their son as a music room.

Also, mold returned to the same kitchen cabinet the tenant had cleaned (and received compensation for his efforts) prior to the last hearing.

Mold tests were done in April – paid for by the landlord – which confirmed the presence of mold.

The landlord interviewed potential contractors and after consultation with the tenants, hired one.

The work was scheduled to start on Monday, May 26. Everyone knew that the tenants could not reside in the unit while the repairs were being made and the landlord and the tenants made some arrangements for alternate accommodation in a nearby motel.

The contract between the landlord and the contractor specified that the job would be done in five days. This is the information that was provided to the tenants.

On Sunday May 25 the landlord, the contractor and the tenants met at the rental unit. The tenant offered to separate the work area from the balance of the rental unit by putting up plastic walls. The male tenant is a professional painter and is very experienced at installing these plastic walls. According to the male tenant everyone agreed to this because it is a necessary part of any mold remediation project. Subsequently the landlord took the position that she never asked the tenant to do this work and therefore she should not have to pay him for it. However, in the hearing the landlord said she was glad the tenant put up plastic walls because then the tenants could not complain that the contractor stole anything.

As agreed by the parties the tenants spent the first night in a nearby motel at a cost of $155.24 per night. The tenants did not find this particular motel very comfortable; they testified that it was not clean, they saw cockroaches, and there was a lot of drug related activity in the motel. The tenants paid for this night's accommodation.

The tenants testified that they looked around and the most suitable accommodation was a Holiday Inn some distance away. This was a double room with minimal cooking facilities. However, it was clean and they were comfortable sleeping there. It cost more per night than the first motel.

There was a lot of wrangling between the landlord and the tenants about the cost and suitability of this motel over other motels in the area. However, the tenants stayed at the Holiday Inn until the work at the rental unit was completed. The tenant paid the total cost of $1879.79 for the hotel. They want the sum of $15.97 deducted from their claim for this expense.

The landlord testified that on Thursday May 28 the contractor suggested that she make an insurance claim for the work he was doing. She contacted her insurance company and an appointment was set with the adjuster for the following Monday. She also testified that the contractor called the tenants and advised them that an insurance claim was going to be made.

Certainly someone let the tenants know about the insurance claim because at 10:28 am on May 28 the tenants' texted the landlord: "I have been informed that your insurance company is coming to our suite today. You need to inform us when this will take place. NO ENTRY illegally."

The work stopped pending the inspection by the insurance adjuster.

The tenants testified that a major source of stress for them was that the landlord did not communicate with them about the status of the repairs and this in turn caused them a problem at the Holiday Inn where their initial booking was only for a couple of nights.

The tenants filed copies of many of their messages to the landlord about this. For example, on May 28 at 1:14 pm they wrote: “Rose it’s 1:15 on Thursday afternoon. You told us that the contactor would be done today. Have you seen our suite?!! How is that going to happen? I need to know what you want us to do today.”, and at 5:55 am the following morning: “Rose. It’s Friday May 30. You told us this renovation would take 4 days. We have to check out by 11:00. WHERE DO YOU EXPECT US TO GO??????????? We need an answer soon. You can’t do this to a tenant. I DO NOT know how you are a landlord to other properties. 11:00 is checkout time!!!!”

The landlord testified that the tenant texted her 42 times on Wednesday, May 28. She said she answered some but not all of the texts before going to the police. The tenants’ position is that the landlord did not respond and did not give them any information.

There was conflicting evidence about how often the tenants came by the unit to check on the contractor’s progress. The landlord testified that the tenants came by before 7:00 am most days on their way to work and again on their way home. The female tenant said they stopped by every day after work. The contractor would tell them that there was more to be done than he had anticipated. The male tenant said they came four times during the first week and twice during the second week. He testified that during the last two or three days of the project it really was not clear how long the job would last. He said that one of the problems was that the contractor did not know how to paint. He also said the contractor was asking him for advice on how to do certain things.

On May 30 the contractor, the landlord, the tenants, and the Roto Rooter service man met at the rental unit. They discussed the upcoming visit by the insurance adjuster.

They also discussed the condition of the wall in the wine room. This wall is a continuation of the same water damaged wall in the kitchen and bathroom. The contractor demonstrated that the studs were completely rotten as a result of water damage.

In her testimony the landlord acknowledged that the contractor showed her where there was a problem with water damage. She refused to authorize any additional work so the contractor only repaired the existing holes in the drywall; he did not remove and replace any of the damaged studs or do any remediation in this area. The landlord testified that she is going to get this fixed after the tenants are evicted.

The insurance adjuster came to the rental unit on Monday, June 2. When it became clear that a claim was not going to be successful the contractor resumed work.

By Thursday, June 5 the contractor had finished the work. The contractor told the tenants they could come back. The contractor did some cleaning, including shampooing the carpet that was not behind the plastic walls. The landlord looked at the contractor's efforts at cleaning and concluded they would not meet the tenants' standards. She did some more cleaning and then paid the contractor.

The tenants had earlier asked that professional cleaners be hired to clean up after the contractor. The female tenant, who arranges for and supervises the cleaning at her husband's jobs, was very clear that even if the landlord had asked for permission to enter the unit to clean she would not have given the permission because she did not want the landlord to do the cleaning.

The tenants came to the unit on the afternoon of June 5. The landlord was in the back yard and the door to the suite was open. The carpet was very wet and the plastic was still in place.

The tenants decided to spend one more night at the Holiday Inn. The next day they returned to the rental unit, removed the plastic walls and cleaned everything to their satisfaction. The landlord argues they could have stayed at the rental unit that night.

The tenants filed invoices for meals during this period in a total amount of $480.44.

The tenants also claimed $180.00 for gasoline. The male tenant explained that he has had an ongoing contract with a developer for the past tow years and all of his jobs have been within a ten minute radius of the rental unit. While they were staying at the Holiday Inn his commute increased by fifteen minutes more in either direction, which resulted in an increased expenditure for gas.

The tenants also claimed $214.20 for the labour, materials, and tax for installing and removing the plastic walls.

On June 5 the tenants filed this application for dispute resolution asking for compensation for the disruptions and expenses incurred by the repairs.

On June 13 the landlord issued and served the tenants with a 1 Month Notice to End Tenancy for Cause. The reason stated on the notice was that the tenants have significantly interfered with or unreasonably disturbed another occupant which seriously jeopardized the health or safety or lawful right of another occupant or put the landlord's property at significant risk. The effective date of the notice was July 14.

The tenants provided that landlord with a cheque for the rent that was due on July 15. She cashed the cheque without providing the tenants with a receipt or other documents that stated the payment was accepted for "use and occupation only".

The landlord accuses the tenants of blackmailing her and testified, in very emotional but very general terms, of her fear that the tenant was going to harm her or even kill her. The claim of blackmail is based upon the tenants having twice filed for dispute resolution for what the landlord feels are exorbitant amounts. The male tenant fought in the first Gulf War in Kuwait. Based upon his personal history, he finds the landlord's allegations particularly offensive. He says that he has seen real blackmail and that he has neither harmed nor threatened physical harm to the landlord.

The landlord accused the tenants of saying derogative things to her based upon the fact that she is a recent immigrant to Canada. These types of remarks are particularly offensive to her.

In her e-mails to the tenants, her written submissions for the hearing, and most emphatically in her oral testimony, the landlord accused the tenants of lying.

Since the landlord served the tenants with the notice to end tenancy there have been several spats between them, some of which have ended by one party or the other calling the police. No charges have resulted from any of the calls.

The tenants and their son testified that:

- The landlord continually asked the male tenant for assistance with repairs and dealing with tradesmen and contractors.
- The landlord refuses to make necessary repairs in a timely manner.
- The landlord's conduct and the ensuing stress has caused both tenants to take medication for stress.
- They find the stress of living with the landlord unbearable.
- The son has been sick ever since they moved into this unit. When he was staying at the Holiday Inn his symptoms disappeared only to return as soon as he moved back home.
- They are afraid of the landlord.
- The landlord has made life a living hell for them.
- They like the area and the rental unit and want to continue to live in this suite.

With respect to the landlord's access to the unit the landlord testified that she went into the unit everyday while the remediation project was ongoing to check on the contractor's progress. There is no evidence of the landlord entering the unit illegally before or after the project although there was contradictory evidence as to whether the landlord tried to look through a glass door on one occasion.

Analysis

Is the 1 Month Notice to End Tenancy for Cause dated June 13, 2014 valid?

As explained in *Residential Tenancy Fact Sheet 124: Re-instatement of Tenancies:*

> "Where a landlord has served the tenant with a One-Month Notice to End Tenancy, and then accepts a rent payment for the month after the tenancy was to end, the landlord should clarify with the tenant whether they have reinstated the tenancy.

When a landlord does not want the tenancy to continue, the landlord should:

1. Specifically tell the tenant that the rental payment is being accepted for the use and occupancy only and does not reinstate the tenancy; and,
2. Tell the tenant that they must move out, as required by the Notice to End Tenancy."

The landlord accepted the July 15 rent without making it clear that it was being accepted for use and occupation only. By her action she reinstated the tenancy. Accordingly, the 1 Month Notice to End Tenancy for Cause dated June 13, 2014 is set aside and is of no force or effect.

Are the tenants entitled to any financial compensation from the landlord and, if so, in what amount?

As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages:* "Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through not fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of premises or property affected."

Given the nature of the work being done the tenants could not stay in the unit while the repairs were being made. I find that it was reasonable for the tenant to move out of the unit the night before the work started and to move back in after the carpet was dry. The tenants are entitled to their out-of-pocket expenses they incurred while they were required to stay away from their home. I find that the motel accommodation they selected was very reasonably priced for this area in the summer time and that their claim for meals was very modest. Finally, I find that the tenant's explanation of the claim for gas reasonable. Accordingly I award the tenants the sum of $2679.04 for out-of-pocket expenses comprised of motel accommodation in the amount of $2019.04; meals in the amount of $480.44; and gasoline in the amount of $180.00.

In addition, the tenants were deprived of the use of their home for eleven days. I find they are entitled to a rent reduction in the amount of $861.63, calculates at 11 days @$78.33 per day.

No additional amount will be awarded for loss of quiet enjoyment during this period. The tenants spent a lot of time and energy trying to prove that because of the landlord's failure to communicate with them they had no idea what was happening with the project and did not know when they could move home, and faced increased stress as a result.

However, this was really quite disingenuous on their part. The tenants work in the construction industry. They, more than most people, should know that all construction projects, but most particularly renovation projects, may take more time than anticipated. Depending on whose evidence one believes the tenants were at the unit twice a day, once a day, or every other day

or so. It should have been perfectly apparent to them; even without talking to the contractor who was telling them that there was more work than he anticipated; that they were not moving home on Friday night. This is confirmed by the text messages they sent the landlord on Thursday, May 28 firstly, where they talk about the insurance claim and then later in the text sent in the afternoon that makes it clear they have seen the suite and know they cannot move back in on the next day.

The tenants' claim for $214.20 for sheeting off the unit and then removing the plastic sheeting is allowed in full. This is an essential part of any remediation project and the landlord benefitted from this work being done. It is clear from the photographs that the tenant did this work neatly and professionally.

Should any additional order for loss of quiet enjoyment be made and, if so, in what amount?
In the previous hearing the tenants claimed for loss of quiet enjoyment in the amount of 4% of the rent paid for:

- The landlord's continual efforts to be paid a greater share than the amount specified in the tenancy agreement for utilities.
- The landlord's failure to make repairs in a timely manner.
- The landlord's failure to keep the rental unit safe and healthy.

On this application the tenants seek a rent reduction in the amount of $250.00 per month from the start of the tenancy to the date of the hearing for:

- The landlord's failure to make repairs in a timely manner.
- The landlord's continual requests to the male tenant for help or assistance.
- The landlord's communications with them.

The tenants' claim in the previous hearing was dismissed. Accordingly, any portion of the tenants' claim under this heading up to and including December, 2013, is *res judicata.*

After two hearings I have read dozens of the E-mails, letters and text messages that the landlord and the tenants have sent to each other and listened to several hours of testimony from them. Both sides find the other's remarks hurtful and rightly so. The following is a typical example of their communication with each other:

On May 27, 2014 the tenant writes to the landlord (in part) :

> "We don't understand how you can come to this country and have no job and take care of 4 properties and still have no clue what to do in these situations. You need to learn Canadian ways better.",

to which the landlord responded (in part):

> "That is the fact! What's the purpose you are lying?
> I immigrated to Canada legally as an investment immigrant. I was a successful businessperson and made money legally in China. I'm working every day now as a self-employer."

On May 28 the female tenant who was very stressed and frustrated wrote the landlord (in part):

> "I am absolutely tired of you demeaning my husband Jimmy every time money is an issue. It's like you have to own power! In Canada all people are equal. Whether you like it or not. That is the Canadian way. Confirm this with your English teacher."

It's clear that both parties participate in this behaviour.

Although the tenants find the wait for repairs long in fact the evidence is that in December of 2013 the tenants testified that all necessary repairs had been made. Between that Christmas and the end of May at least one electrician, a plumber, a landscaper (to address drainage issues), a mold tester, and a general contractor had all worked at the property. This is not the pattern of a landlord who is not attending to maintenance issues.

Finally, the landlord does ask the male tenant for help and advice. He is not obligated to help the landlord and many of the texts and E-mails filed by the tenants show him declining to help. However, he does help the landlord from time to time, which may be why she continues to ask him for assistance. There is no evidence that any of these requests are accompanied by threats or other coercive action by the landlord.

Finally, there were two open holes in the wine room for almost three months. The holes did not affect the function of the room, other than the possibility as argued by the tenants, that the open holes exposed them to mold. Section 7(2) of the *Residential Tenancy Act* provides that anyone claiming compensation must make all reasonable efforts to minimize the loss suffered. There was no evidence that the tenants had done anything to mitigate the risk of exposure to mold, such as covering the holes with plastic.

Accordingly, the tenants' claim for damages for loss of quiet enjoyment is dismissed.

Should a repair order be made and, if so, on what terms?
The landlord admitted that further repairs are required to the wall in the wine room. The landlord is ordered to have all of the water damage in this wall remediated by a qualified contractor. I recognize that contractors may be busy at this time of year and it may take a little while before a suitable contactor is able to start work. If work has not commenced by December 1, 2014, the tenants may apply to the Residential Tenancy Branch for a further order.

Should an order restricting the landlord's right to enter the rental unit be made and, if so, on what terms?
Should an order be made allowing the tenants to change the locks on the rental unit?
The only solid evidence of any entry into the unit by the landlord is during the construction period. During this period most of the unit was blocked off by plastic walls; the tenants were not in residence; and the landlord had an obligation to over the contractor's work. The landlord

could have met the technical requirements of the legislation by giving the tenants one blanket notice covering the entire period of the renovation. Now that the renovations are complete I am not satisfied that the landlord is likely to enter the unit except as authorized by law. Accordingly, no order further limiting the landlord's right of entry or allowing the tenants to change the locks will be made.

Filing Fee

As the tenants were substantially successful on their application they are entitled to reimbursement from the landlord of the fee they paid to file it- $100.00.

Conclusion

a. The 1 Month Notice to End Tenancy for Cause dated June 13, 2014 is set aside and is of no force or effect.
b. A monetary order in the amount of $3854.87 comprised of $2679.04 for out-of-pocket expenses, $861.63 for loss of use of the rental unit; $214.20 for putting up and taking down the plastic sheeting; and $100.00 filing fee is made in favour of the tenants. Pursuant to section 72 this amount may be deducted from each rent payment due to the landlord until paid in full.
c. A repair order has been made.
d. All other claims by the tenants are dismissed.

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 13, 2014

Residential Tenancy Branch