

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, LRE, OPT

### Introduction

This hearing dealt with an application by the tenant for a monetary order and orders setting aside a notice to end the tenancy, compelling the landlords to comply with the Act, setting restrictions on the landlords' right to enter the unit and an order of possession for the tenant. Both the male landlord, DL, and the female landlord, LL (his wife) were represented at the hearing by DL. Where I refer to the landlords in the singular in this decision, I refer to DL.

At the hearing, the tenant confirmed that she has already vacated the rental unit and does not desire to live in the unit again. I therefore considered all of the claims except for the monetary claim to have been withdrawn.

At the hearing, the tenant asked to amend her claim to include a claim for the return of the rent paid for the month of March. When I asked the landlord for his position on the matter, he explained why he believed the entire claim should be dismissed and attempted to discuss the ways in which he believed the tenant had breached the tenancy agreement. The landlord did not suggest that there was any new evidence which he would have submitted had he known that this claim would be included nor did give any indication that he would be prejudiced in any way by the inclusion of this claim. The tenant filed her claim on March 13 and it was not until she received the landlord's evidence on or about March 31 that she would have had confirmation that he had received and cashed her rent cheque for March. The issue is substantially related to the rest of the tenant's claim and I found that as there was no prejudice to the landlord in including the claim and as the tenant could not reasonably have made the claim until she was certain that rent had been paid, it was appropriate to allow the amendment.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is on the lower floor of a home in which the upper floor is occupied by the landlords. The parties agreed that the tenant is obligated to pay \$750.00 in rent each

month. The tenant is 18 years old and during the relevant time was in a youth agreement with the Ministry of Children and Family Development (the "Ministry") whereby the Ministry paid rent for the tenant and helped her learn to live independently. The tenant's social worker was in occasional contact with the landlords.

The tenant testified that she was away from the rental unit in the early part of March and returned to the unit at approximately 5:30 a.m. to discover that the gate to the property had been padlocked. She discovered a letter on the gate which stated in part as follows:

You have failed to respond within the allotted time to the 10 day notice to end tenancy for unpaid rent and utilities. Therefore, this notice is now in effect, **and the tenancy will be terminated** on March 14, 2015. Any payment received after this notice has been posted will be received for USE AND OCCUPANCY ONLY.

Steps have now been taken to secure the property due to severe personal health and safety concerns found during our inspection of March 8 including:

In addition, general damages including damaged stove handle, wall damage, and broken wall plates have been found to date. Further suite inspection to follow upon termination of agreement.

Access to the premises can be made by appointment as all belongings have been now been [sic] documented and stored, unsanitary items have been disposed of.

Failure to remove all remaining belongings by March 14 at 13:00 will result in these items being considered abandoned, and will be disposed of in accordance with the residential tenancy act promptly. All costs to deal with these possessions will be recovered through the legal system.

The tenant testified that she jumped over the fence and tried her key in the door, but it would not work. She stated that she looked in the unit with a flashlight and saw that her belongings had been placed in boxes and on the door of the rental unit, she discovered a 10 day notice to end tenancy for unpaid rent (the "Notice").

The tenant originally stated that she knocked on the door of the landlord's unit but no one answered. Approximately 2 hours after the time she initially knocked, LL answered the door and gave her a key, telling her that there was no reason the tenant's key should not work as the locks hadn't been changed. The tenant later claimed that she

was locked out of the rental unit for 2 days before LL gave her a key. The tenant's mother, ND, testified that she went to the landlords' unit to speak with them and knocked on the door, but LL did not answer the door even though ND knew she was inside the unit.

The tenant stated that her belongings were boxed up and all of her food had been discarded. She testified and ND confirmed that approximately 2 weeks before, the tenant's uncle had completely stocked her cupboards and refrigerator with food. She estimated that the value of that food exceeded \$200, but chose to limit her claim.

The tenant testified that she moved her belongings from the unit on or about March 13 because she feared that the landlords would follow through on their threat to dispose of the items on March 14.

The tenant testified that she believed the Ministry was supposed to mail her rent cheques directly to the landlord and at the hearing said she was surprised to learn that the landlords did not receive the rent by March 1.

The tenant seeks to recover \$750.00 in rent paid for the month of March, \$45.00 for a framed picture of Minnie Mouse which she claims she purchased at an auction and was broken by the landlords when they packed her belongings, \$200.00 as the value of groceries which she claims the landlords discarded and \$48.00 as the value of having been locked out of the rental unit for 2 days.

The landlord testified that the Ministry did not typically mail a rent cheque directly to him but on one other occasion they had mailed it after the tenant had failed to pick it up at the office. In March, the landlord testified that he didn't receive the tenant's cheque until March 12 and noted that the cheque was dated February 23.

The landlord testified that he posted the Notice on the tenant's door on March 2 and a few days later, posted a notice that he was coming to inspect the suite.

The landlord stated that on March 6, he contacted the Ministry and was told by the duty worker that March would be the last month in which the Ministry paid rent as they were not renewing the youth agreement they had in place with the tenant. The landlord's written statement noted that he was surprised as the tenant had not provided 30 days' notice that she was leaving or told the landlords that she would be paying her own rent. As a result of the March 6 telephone call, the Ministry mailed the rent cheque for March directly to the landlord.

The landlords inspected the suite on March 8 and took photographs on that date. The landlord testified that he discovered that the unit was filthy and found moldy food

everywhere. He testified that his wife was pregnant and that because the mold presented a health hazard, he decided he needed to box the tenant's belongings and clean the unit to protect his family. The photographs show extreme clutter, plates with moldy food, a frying pan on the stove with moldy food and a sink piled high with dishes.

The landlord testified that he discarded all of the food in the refrigerator, but it was expired and moldy. He testified that he recalled seeing chicken wings, milk and peaches. He testified that he packaged up all of the dry food which the tenant took with her when she vacated the unit. The landlord's photographs show a large box packed with boxes of non-perishable food.

The landlord testified that the picture of Minnie Mouse was in undamaged condition when he photographed it on March 8 but when he returned on March 14, it was broken. He assumes the tenant broke the picture.

The landlord testified that when he spoke with the tenant at some point after her return, he told her that she could "stay for the week".

The landlord acknowledged that LL did not answer the door to speak with the mother, but testified that it was because LL was afraid. I asked the landlord whether either the tenant or her mother had ever in any way threatened him or his wife and he acknowledged that they had not. The landlord insisted that if the tenant or her mother wished to speak with him or his wife, they should have telephoned and implied that because they did not, they clearly did not want to remain in the unit. He stated that he believes he was justified in packing the tenant's belongings and forcing her to leave by March 14 because in the March 6 conversation with the Ministry, he had been told that the tenant had "basically abandoned" the rental unit.

The tenant denied having received any of the non-perishable food items, she denied having broken the Minnie Mouse picture and she denied that the landlord at any time told her she could stay in the rental unit.

### Analysis

There is no question that the tenant breached the tenancy agreement by not paying rent on March 1. It is clear that the tenant was expected to pick up her rent cheque from the Ministry and deliver it to the landlord as she had in almost every other month of her tenancy and it is equally clear that she neglected to do so in the month of March. When a tenant fails to pay rent when it is due, the right of the landlord is to serve a notice to end tenancy. The landlords in this case exercised that right, but went well beyond what they were legally permitted to do.

There are no circumstances under which landlords are permitted to interfere with a tenant's belongings. If a tenant does not vacate a rental unit when required to do so pursuant to a notice to end tenancy, the landlord's recourse is to seek an order of possession from the Residential Tenancy Branch through an application for dispute resolution. If successful, the landlord must serve that order on the tenant and if the tenant fails to comply with the order, the landlord may obtain a writ of possession through the Supreme Court and hire a court appointed bailiff, who is the only person empowered to forcibly remove a tenant and their belongings. Section 57(2) of the Act specifically states that "the landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules."

At the hearing, the landlord indicated that he is familiar with the process for obtaining an order of possession, but he believed he had the right to pack the tenant's belongings because they created a health risk. Even if there were a provision under the Act whereby the landlord were permitted to remove the tenant's belongings in the event of a health risk, there is insufficient evidence to show that any health risk existed. I find absolutely no evidence to support the landlord's farfetched assertion that a few plates with moldy food in a self-contained suite in the basement of his home posed any health risk whatsoever to his family or his unborn child.

Section 26(3) of the Act provides as follows:

26(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

26(3)(a) seize any personal property of the tenant, or

26(3)(b) prevent or interfere with the tenant's access to the tenant's personal property.

I find that the landlords' actions in locking the gate interfered with the tenant's access to the property. I accept that the landlords did not change the locks to the rental unit, but I find they had no right to impede the tenant's access to the yard. I find that the landlords' threat to dispose of the tenant's belongings after March 14 show a complete disregard for the prohibition outlined in s. 26(3)(a) and was designed to intimidate the tenant.

The tenant was unaware of the landlords' actions until she arrived home in the early hours of March 9. The landlords were well aware that the tenant was a child and they should have made themselves available to speak with her mother or any other advocate who acted on her behalf. Rather than make themselves available or act reasonably to work out a solution to the issues at play, LL refused to answer the door to speak with

the tenant's mother even though there was absolutely no reason why she should be afraid to interact with either the tenant or any of her advocates. The landlords should not have expected that after having ignored the tenant's attempts to speak directly with them that she would attempt to telephone, particularly after the landlords had behaved in such an intimidating fashion and with such indifference toward their obligations under the law.

The tenant's belongings were packed on March 8 and she did not stay in the rental unit after she arrived home on March 9. I find that the landlords prevented her from using the unit as a residence by packing her belongings. I find that the tenant should only be responsible for \$169.25 in rent for the period from March 1-7, which is the week in which she still had full use of the rental unit even though she was not at home at that time. I order the landlords to return to the tenant the rent they received for the period from March 8 – 31 and I award the tenant \$580.65. I dismiss the tenant's claim for compensation for the 2 days in which she claims she was locked out of the rental unit because I find insufficient evidence to show that she was locked out and in any event, the compensation awarded above compensates her for the days in question.

I am not satisfied that the landlords broke the Minnie Mouse picture or that the picture is valued at what the tenant is claiming for it. While the landlords may have illegally boxed the tenant's belongings, the photographs they provided show that it was done neatly and that care was taken. It would appear from the landlords' photographs that the picture was not boxed and I find that it just as easily could have been broken by the tenant, particularly since the breakage appears to have occurred between March 9-13 when the tenant had access to the property. I therefore dismiss this claim.

The landlords claim that all of the food they discarded was expired or moldy while the tenant claims that all of her food, including non-perishables, were discarded. The landlords' photographs clearly show that the non-perishables were boxed up for the tenant and I find it highly unlikely that the landlords would have boxed those items and then discarded or taken them. I find it more likely that the tenant has the non-perishables and that the items in the refrigerator were the only items discarded. I find that the tenant has not proven what was in the refrigerator and I note that she did not disagree with the landlord when he said that the items were expired. I therefore find that the landlords only discarded items which no longer had value as they were expired and I therefore dismiss this claim.

The tenant has been awarded \$580.65 and I grant her a monetary order under section 67 for this amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I note that at the hearing, the tenant provided a forwarding address and the landlord acknowledged that he had written it down. I advised the landlord that as the tenant confirmed that this is her forwarding address, he should act within 15 days to either return the deposit to the tenant in full or file a claim to retain the deposit. The landlord indicated at the hearing that because the Ministry had paid the security deposit on the tenant's behalf, he believed only the Ministry would be entitled to the return of the deposit. I advised the landlord that because the security deposit was paid on behalf of the tenant, the tenant was the party who had the right to its return should the landlords choose not to file a claim against it.

### Conclusion

The tenant is awarded \$580.65.

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: April 08, 2015

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Residential Tenancy Branch

