



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, OLC, OPB, CNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order compelling the landlord to comply with the Act and tenancy agreement and an order compelling the landlord to perform repairs and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

At the beginning of the hearing, the tenant advised that was recording the hearing. I advised him that the Residential Tenancy Rules of Procedure prohibit recording a hearing and requested that he stop recording immediately. The tenant confirmed that he had stopped recording the hearing. Throughout the hearing, the landlord's telephone connection was troublesome and at several points I had to ask him to repeat himself as I could not hear him clearly. The landlord attributed his connection difficulties to the tenant and alleged that he was continuing to record the hearing, but as I had no reason to believe the connection problems were related to any activity of the tenant, I did not pursue the issue further.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to perform repairs?

Should the landlord be ordered to comply with the Act and tenancy agreement?

Is the tenant entitled to a monetary order as claimed?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 16, 2014, that rent was set at \$1,300.00 per month and that at the outset of the tenancy, the landlord collected a \$1,000.00 security deposit from the tenant. They further agreed that the rental unit is

located on the upper floor of a home in which the lower floor has a separate, self-contained rental unit. They further agreed that at some point in early June, the landlord served the tenant with a 2 month notice to end tenancy (the "Notice"). The landlord submitted a copy of the first page of the Notice but did not submit a copy of the second page. The tenant submitted a copy of both pages of the Notice and on the second page of the Notice in the area in which the landlord is to indicate the reason for ending the tenancy, there is no reason indicated. The landlord insisted that he checked a box to indicate that he intends to move into the rental unit. The tenant seeks an order setting aside the Notice and the landlord seeks an order of possession based on the Notice.

The tenant seeks an order compelling the landlord to repair an electrical panel, claiming that he cannot use the electrical outlets in the kitchen without tripping the breakers. The parties agreed that on late November, the tenant reported to the landlord that the heat was not working and on November 23, the landlord sent to the rental unit a technician to resolve the issue. The parties submitted copies of text messages exchanged on the issue and messages exchanged on November 24 show that the landlord asked if the problem had been fixed, to which the tenant replied "yes all is great, heat, plus water and also He fixed the switch in the basement that was crossed and was making a short circuit to turn the fuses off Thank you so much" (reproduced as written). The landlord testified that he understood that the electrical problem had been resolved while the tenant testified that the issue was not resolved and he continued to complain that he could not use the outlets in the kitchen. The landlord denied having received further complaints about the electrical issue.

The tenant seeks an order compelling the landlord to install a hand railing on the steps in the front yard. The rental unit has 3 steps which lead from the sidewalk to the walkway leading to the door and then another series of steps leading to the doorway of the rental unit. The tenant testified that the hand railing beside the 3 steps was falling apart when the tenancy began and the landlord has since removed the top bar which one would hold when ascending or descending the steps and has left just one support bar in place. The tenant testified that the stairs are unsafe for his pregnant wife. The landlord testified that he is willing to replace the railing, but is not in a financial position to do so at the moment.

The tenant seeks an order compelling the landlord to provide him with laundry services as access to laundry facilities is part of his tenancy agreement. At the hearing, the parties agreed that the tenant would have access to the laundry room each Saturday morning for 6 hours.

The tenant seeks an order compelling the landlord to perform yard maintenance, complaining that until recently, the yard was constantly overgrown. The landlord indicated that he has been maintaining the yard.

The tenant seeks a monetary order for \$5,000.00 for loss of quiet enjoyment. He testified that in December, several young men (the "Basement Occupants") moved into the unit on the lower floor of the residential property. The tenant claimed that from the time they moved into the basement, the Basement Occupants smoked either inside the unit or just outside so that smoke drifted into the tenant's rental unit and they created an extreme amount of noise. He testified that he and his wife were disturbed 3-4 times per week, usually late at night or in the early hours of the morning, by the sound of the tenants partying, yelling or throwing things. The tenant provided evidence that on January 9 he first complained to the landlord through a text message sent at 1:02 a.m. in which he complained that the Basement Occupants were extremely loud. The tenant also provided to the landlord several audio files so he could hear how clearly the Basement Occupants could be heard. The landlord responded to that text message by promising to speak to the Basement Occupants immediately. At 3:09 a.m. on the same date, the tenant sent another text message advising that the noise from the Basement Occupants was continuing and that this was the 5th time their noise had disturbed him.

The tenant testified that the Basement Occupants continued to make noise despite the landlord having spoken with them and that he continued to complain to the landlord. The tenant provided a copy of a text message sent to the landlord on February 3 in which he asked the landlord to speak with the Basement Occupants to remind them that there was no smoking permitted in the house and complaining that their cigarette smoke was coming inside his home. The tenant provided a copy of a text message sent to the landlord on February 11 in which he complained that the Basement Occupants were dumping their garbage outside the garbage bins and the tenant was cleaning up the mess. He also complained about noise on that date and the landlord responded by saying that he was going to give them a notice to end tenancy. The following day, February 12, the tenant sent the landlord several photographs showing the garbage left by the Basement Occupants outside the garbage bins. In another undated text, the tenant advised the landlord that he had telephoned the police to report his complaints about the Basement Occupants. On April 13 the tenant complained about the Basement Occupants' cigarette smoke and continued that complaint on April 15. On May 1 at 1:07 the tenant again texted the landlord to report that the Basement Occupants' party was disturbing them. The landlord responded to this text message by advising them that he had served the Basement Occupants with a notice to end their tenancy and that they would be leaving at the end of the month.

On May 8 the tenant again texted the landlord complaining about smoke and on May 10 wrote a long complaint detailing all of the difficulties he had experienced with the Basement Occupants. The landlord responded to this text by asking what the tenant had sprayed in the basement.

The tenant claimed that the landlord repeatedly harassed him, demanding that the tenant remove his items from the garage, which the tenant agreed was not part of his tenancy agreement, even though the landlord had permitted him to use the garage for many months. He also took issue with the landlord demanding cash payments for utilities and not providing receipts.

The landlord testified that he did everything he could to address the issues the tenant brought to his attention, but came to believe that the tenant was exaggerating the problem. He testified that he was certain the Basement Occupants did not smoke inside or immediately outside the unit and although a large pile of cigarette butts was found immediately outside their door, he claimed that they had collected them there because they did not want to throw the butts into the street. The landlord claimed that the Basement Occupants told him that the tenant had “planted” cigarette butts around their unit in order to make it appear that they were smoking in the property. The landlord testified that on May 1 the Basement Occupants reported that the tenant sprayed pepper spray into the basement unit, but the police report the landlord provided states that the complaint of pepper spray was unfounded. The landlord denied having harassed the tenant.

The tenant also seeks to recover \$350.00 from the landlord which is the amount by which he overpaid the security deposit.

The landlord seeks a monetary award of \$5,000.00 against the tenant, claiming that the tenant has harassed him, breached the tenancy agreement by parking a commercial truck on the property and subletting the rental unit.

Both parties seek to recover the \$50.00 filing fees they paid to bring their respective claims.

Analysis

First addressing the Notice, in order to end a tenancy, the Act requires the landlord to serve on the tenant a notice which explains why the landlord intends to end the tenancy. Although the landlord claimed that he checked a box indicating the reason the tenancy was ending, the landlord did not submit a copy of that page of the Notice and the tenant's copy shows that no reason was given. I find that the landlord failed to advise

the tenant why he wanted to end the tenancy and I find that the Notice is therefore invalid and of no force or effect. As a result, the tenancy will continue until one of the parties gives the other a valid notice to end it. The landlord's application for an order of possession is dismissed.

I find that the tenant has not proven that he brought the electrical issues to the landlord's attention after he indicated on November 24 that they had been resolved and for that reason will not order that the landlord perform repairs to the system as I am not confident he has had opportunity to inspect the system to determine whether a problem exists and how it may be addressed. However, I find it appropriate to order the landlord to have the electrical system inspected by a professional to determine whether there is a problem which prevents the tenant from using the outlets in his kitchen. **I order the landlord to have the electrical system inspected by August 15, 2015.**

In order for me to issue an order compelling the landlord to perform repairs to the railing, I must be persuaded that the railing was in place at the time the tenancy began and therefore the tenant has a right to expect that it will remain operational or that it is essential to the unit being used for its intended purpose. The tenant indicated that the top bar of the railing has never been properly affixed to the support bars and I find that he has not proven that its repair is a safety issue or that the unit cannot be used for its intended purpose without the railing being in place. I therefore dismiss the claim for an order compelling the landlord to repair the railing.

With respect to the tenant's claim for orders compelling the landlord to comply with the tenancy agreement, the landlord agreed to provide him with access to the laundry room for 6 hours each Saturday morning and agreed that he would maintain the yard area. As the landlord has agreed to provide these services, I find it is unnecessary for me to issue an order.

In order for the tenant to succeed in his monetary claim, he must prove that the landlord breached his obligations under the Act and that this breach caused the tenant to suffer a loss. I find that the tenant has met this burden. The landlord had an obligation under the Act to provide the tenant with quiet enjoyment of the rental unit and I find that he failed to meet that obligation. The landlord received multiple complaints from the tenant about noise, dumping garbage and smoking, but the problems with the Basement Occupants continued and the landlord apparently chose not to act on the notice to end tenancy which he claimed to have given to the Basement Occupants. There is no indication that while the tenant was complaining from January to May that the landlord disbelieved his complaints. Rather, he just failed to act on the complaints in a manner that would resolve them.

It is apparent to me that the landlord believed the tenant until he filed his application for dispute resolution in May and it is only at that time that the landlord suggested that the tenant was causing problems with the Basement Occupants or that his complaints were not legitimate. It was at this time as well that the landlord demanded that the tenant cease using the garage.

I am unable to find that the landlord harassed the tenant as the landlord's request for payment of utilities and demand that the tenant stop using the garage were legitimate requests. However, I find that the landlord failed to deal with the issues created by the Basement Occupants and therefore failed to provide the tenant with the quiet enjoyment of the rental unit to which he was entitled.

The tenant has claimed \$5,000.00 and I find that claim to be excessive. Although the problems with the Basement Occupants began in December, the tenant did not bring them to the attention of the landlord until January and therefore the landlord cannot be said to have breached his obligation to provide quiet enjoyment in December as he was not made aware that there was a problem. I find that the tenant experienced just over 6 months of excessive disturbance from the Basement Occupants. I find it appropriate to award the tenant 15% of his rent for those 6 months and I award the tenant \$1,170.00.

Section 19 of the Act prohibits landlords from requiring more than one half of one month's rent as a security deposit. Even though the tenant agreed to pay this amount, section 5 of the Act provides that parties may not contract out of the Act. I find that the tenant is entitled to recover the \$350.00 overpayment and I award him that sum.

As the tenant has been successful in his claim, I find he should recover the \$50.00 filing fee and I award him that sum for a total award of \$1,570.00. The tenant may deduct this amount from future rental payments, but in the event the tenancy ends before the entire amount can be recovered, I grant the tenant a monetary order under section 67 for \$1,570.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the tenant is able to recover some of the award through a rental reduction, it will serve to reduce the amount of the award which is recoverable through the Court.

Turning to the landlord's monetary claim, the landlord does not have a statutory right to quiet enjoyment as does the tenant. Although the landlord claimed that the tenant breached the tenancy agreement and the Act by parking a commercial truck on the property and subletting the rental unit, he has not proven that he has suffered a loss as a result. I therefore dismiss the landlord's claim in its entirety.

Conclusion

The landlord's claim is dismissed and the tenant is awarded \$1,570.00. The Notice is set aside. The landlord is ordered to inspect the electrical system.

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: July 16, 2015

Residential Tenancy Branch

