



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP, RR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the evidentiary submissions of the other party. The tenant withdrew her application for an order that the landlord provide services or facilities testifying that the matter of her toilet/washroom services had been resolved. However, the tenant continued with her application for an order to reduce her rent for repairs or services/facilities not provided; a monetary order for loss under the *Act* with respect to any rent reduction; and cancellation of the landlord's 1 Month Notice to End Tenancy. The landlord's counsel ("the landlord") confirmed receipt of all materials submitted by the tenant and the tenant confirmed receipt of the landlord's evidence package.

Pursuant to section 55(1) of the *Act*, the landlord made an oral application for an Order of Possession in the event that the tenant was not successful in her application to cancel the notice to end the tenancy. The landlord requested an Order of Possession to be dated August 31, 2015.

Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for damage or loss?

Is the tenant entitled to an order to allow the tenant to reduce rent for services or facilities agreed upon but not provided by the landlord?

Background and Evidence

Both parties testified that this tenancy began on May 1, 2015 on a month to month basis with a rental amount of \$450.00 payable on the first of each month. The tenant rents a room where four tenants reside all sharing a common kitchen and washroom area. The landlord testified that she continues to hold a security deposit in the amount of \$225.00 paid by the tenant on May 1, 2015. The landlord issued a 1 Month Notice on June 2, 2015 identifying the ground to justify the end to the tenancy as:

The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that the tenant is a troublemaker. The landlord submitted several letters and email correspondence from current and previous occupants of the residential premises who commented on the behaviour of the tenant. The landlord advised that many of these occupants were available to testify as witnesses at this hearing and three of those witnesses were called to testify by the landlord. Only two of those witnesses were available during the teleconference. The letters submitted claimed that the tenant;

- monopolized the common area space;
- spent a very long time preparing meals;
- spent too long in the washroom;
- didn't clean up the washroom after she used it;
- ran the water taps for a long time; and
- used the common area late at night.

The landlady testified that she had witnessed the tenant wash her hands at the kitchen sink for a very long time and, on occasion, the tenant would walk away leaving the water running. She testified that everyone who has lived there during this tenancy has complained about the tenant. She testified that the complaints and the behaviour of the tenant have caused her a great deal of stress. She testified that all of her other tenants will move out if this tenant remains in the residence.

The tenant testified that she was not aware of restrictions on the use of the common area. She testified that one previous occupant advised her that she was too loud too late in the evening (after 10.00 pm) and that after she had been advised of this, she

tried to both make meals earlier in the evening, prepare parts of her meals in advance and be quieter. She testified that she attends her mother's nursing home regularly and sometimes returns home late. She testifies that she tries to respect other occupant's schedules.

The tenant provided undisputed sworn testimony that she participates in cleaning the common areas and only spends as long as she needs in the washroom. She testified that occupants can be frustrated and impatient as the toilet is in the same room as the shower and that room is shared by all residents. She also testified that she is a vegetarian and she suggested that perhaps her meals take longer to prepare.

A previous occupant of the residential premise testified that one of the reasons he vacated the residence was because he was consistently disturbed by the tenant. Particularly, he testified that he would hear the tenant in the common area late at night. He testified that late at night referred to 10.00 pm to midnight. He testified that this occurred approximately 3 days each week. He stated in his testimony, "she wasn't dirty or anything like that..." but that the tenant takes up a lot of time in the kitchen. He also stated that the common kitchen is very small for four residents to share. On cross examination by the tenant, the previous occupant/witness acknowledged that the toilet had been in need of repair for a period of time.

A current occupant testified that the tenant can be aggressive in her communication and every day he has "problems" with her. He stated that the tenant uses the sink more than the other occupants. He testified that he often has to wait to make his dinner and that the tenant does not like to share her working space in the kitchen. He also testified that she leaves long blond hairs in the bathroom.

The landlord stated that there were further witnesses to testify. He stated that their testimony was similar and that they had provided written statements as well. The landlord was offered an opportunity to apply to adjourn the hearing to call further witnesses. He declined to do so, indicating that he would rely on the testimony provided and the documentary evidence submitted.

As well as submitting that the landlord does not have cause to end this tenancy and applying to cancel the notice to end tenancy, the tenant also applied for a monetary order in her favour for damage or loss under the legislation, particularly a (past) rent reduction for the landlord's lack of provision of sufficient toilet facilities.

The tenant testified that she (and other residents of the premises) did not have full use of the toilet in the residential premises' shared bathroom facilities for the months of May

and June 2015. She testified that the toilet sometimes did not flush and would occasionally back up/overflow during that period of time. The tenant testified that the toilet was repaired by July 15, 2015. The tenant testified that she attributed an amount of \$50.00 per month to the lack of full toilet facilities during those 2 months, approximately 1/9 of her monthly rental amount.

Analysis

The landlord issued a 1 Month Notice on June 2, 2015 identifying the ground to justify the end to the tenancy as:

*The tenant or a person permitted on the property by the tenant has **significantly interfered** with or **unreasonably disturbed** another occupant or the landlord.*

Section 28 of the *Act* protects a tenant's right to quiet enjoyment. This right applies equally to all residents in the complex. The landlord submits that the landlord must protect the rights of the other occupants of this rental property to quiet enjoyment. He submits that their rights have been infringed by the behaviour of the tenant. He submits that this infringement, interference and disturbance have been significant and unreasonable.

If the tenant had engaged in some of the conduct described, I find that this conduct would not constitute significant interference and unreasonable disturbance of other occupants or the landlord. The testimony of the landlord's witnesses and the supporting materials submitted by the landlord are clear in that they are bothered by the behaviour of the tenant. They would rather her take less time in the shower or the washroom; they would rather her make her meals more quickly and run the water less; they would rather that she do a better job of cleaning up her hair; and they would rather her be quieter in the evening.

Any form of communal living presents challenges. Strangers residing in a common building have difficulties with respect to noise, smells and other sometimes unquantifiable complaints. Strangers who then share a common area that is essential to their daily living (i.e. a bathroom and kitchen) presents even more strain as people all have different styles of cooking, cleaning and communicating. However, this is the nature of a communal residence. I do not find that taking a long time in the bathroom or the kitchen is illustrative of a significant interference or unreasonable disturbance.

I do not find that the landlord's witnesses or evidence suggested that the tenant was unreasonably loud in *late* hours. The evidence presented by the landlord was that the tenant uses the common areas after 10.00 p.m. in the evening and before midnight. I do not find that these timelines represent unreasonable times to use a common area or

make sounds. I also do not find that the testimony indicates that the tenant was unreasonably loud or disturbing, only that she was making noise in the common areas, contrary to the desires of the other occupants of the residence. Finally, the evidence is not that the tenant is excessively unclean or messy, leaving the other occupants to clean up after her. The only mention related to cleanliness was with regard to her leaving her hair in the shower. While it would be ideal if the tenant would clean up immediately after her use of the washroom facilities, I do not find that this presents a significant interference or unreasonable disturbance either.

It is, as stated in section 28 of the *Act* an obligation of the landlord to address complaints of occupants and ensure that their tenants' rights are being protected. This is the nature of the landlord role. The landlord has met these obligations. However, I do not find that the landlord is warranted in issuing a notice to end tenancy as indicated in this notice in the circumstances presented in evidence at this hearing. I do not find that any of the complaints raised about the tenant's behaviour have interfered with the landlord in a significant way or unreasonably disturbed the landlord.

Whenever a tenant's conduct becomes bothersome to other occupants, the landlord has an obligation to issue a written warning to make sure that the tenant understands what complaints and allegations have been lodged and the precise nature of the conduct that is expected. The tenant also should be told that unacceptable conduct may risk termination of the tenancy if it continues. Ending a tenancy is a drastic measure that is seen as a last resort. I find that it is a fundamental principle of natural justice that a party has the right to be warned of the consequences of their behaviour and be given a fair opportunity to correct that behaviour. In this case, the landlord has provided no evidence that there has been written warnings addressed to the tenant to identify and correct any unacceptable behaviour.

While I find that the tenant's lifestyle appears to conflict with other residents and that the tenant's behaviour may be perceived as disturbing to her fellow renters, I find that the landlord did not sufficiently prove that the tenant's annoying conduct had reached the threshold where termination of this tenancy was necessary – any disturbance or interference is neither significant nor unreasonable. I have considered the testimony of the former occupant/witness who testified that he vacated the residence because of the annoying behaviour of the tenant. Despite the testimony that he vacated the residence mainly because of the tenant's behaviour, I do not find that his testimony illustrated behaviour that was, to the objective reasonable person significant nor unreasonable. Therefore, I grant the tenant's application to cancel the 1 Month Notice.

In cancelling this Notice, I encourage the parties to communicate in written form in future with respect to tenancy-related concerns and to retain copies of all communications.

With respect to the tenant's application for a monetary order for loss under the *Act*, I find that her evidence with respect to a faulty toilet was undisputed. The landlord did not provide evidence to contradict the tenant's testimony that the toilet was not fully functional for the first two months of her tenancy. I note that the tenant provided documents that showed she had attempted to communicate this issue to the landlord on more than one occasion. On cross-examination by the tenant, one of the other occupants/witnesses who testified acknowledged an issue with the toilet/plumbing as described by the tenant. Based on the evidence that the tenant has presented showing that the toilet, a primary feature of her rental agreement and living standards was not functional and therefore she is entitled to recover \$100.00 (2 months at \$50.00 each month) from the landlord for failure to provide a facility as required in the residential tenancy agreement.

Conclusion

The tenant's application for an order for repairs is withdrawn.

The tenant's application for a rent reduction for repairs is granted and I issue a monetary order in the amount of \$100.00.

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is granted. The tenancy will continue.

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 12, 2015

Residential Tenancy Branch

