Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, MNDC, OLC, OPT, PSF, RPP, RR, SS

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- for an order cancelling a notice to end the tenancy for landlord's use of property;
- disputing a rent increase that does not comply with an increase permitted by the Regulation;
- 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 comply with the *Act,* regulation or tenancy agreement;
- for an Order of Possession of the rental unit;
- for an order that the landlord provide services or facilities required by the tenancy agreement or law;
- for an order that the landlord return the tenants' personal property
- for an order reducing rent for repairs, services or facilities agreed upon but not provided;
- for an order permitting the tenants to serve documents in a different way than required by the *Act;* and
- to recover the filing fee from the landlord for the cost of the application.

Both tenants and one of the named landlords, who also represented the other named landlord, attended the hearing, and each party gave affirmed testimony.

During the course of the hearing the parties agreed that the tenancy will end September 30, 2015 at 1:00 p.m. and the landlords will have an Order of Possession effective that date and time. Therefore, the tenants' applications for an order cancelling the notice to end the tenancy for landlord's use of property and for an Order of Possession of the rental unit are withdrawn. The tenants also withdraw the applications for an order that the landlord return the tenants' personal property and for an order permitting the tenants to serve documents in a different way than required by the *Act.*

No issues with respect to service or delivery of documents or evidence were raised. All evidentiary material provided by the parties relevant to the remaining applications has been reviewed and is considered in this Decision.

Issues to be Decided

The issues remaining to be decided are:

- Have the tenants established that the landlord has increased the rent contrary to that permitted by the Regulation?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment of the rental unit, costs of preparation for this hearing, and incidental expenses?
- Have the tenants established that the landlords should be ordered to comply with the *Act,* regulation or tenancy agreement?
- Have the tenants established that the landlords should be ordered to provide services or facilities required by the tenancy agreement or law?
- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The first tenant testified that this month-to-month tenancy began on August 1, 2000 and the tenants still reside in the rental unit. Rent in the amount of $1,471.39 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the amount of $550.00 which is still held in trust by the landlords, and no pet damage deposit was collected.

The tenants have provided a Monetary Order Worksheet setting out the claims for:

- $2,331.47 for a hidden rent increase regarding sewer and garbage;
- $13,399.62 for loss of quiet enjoyment of the rental unit;
- $135.45 for an alternate child's birthday party;
- $164.01 for meals;
- $1,500.00 for document and preparation costs for this hearing;
- $24.00 for digital evidence;
- $4,000.00 for aggravated damages;
- $20.00 for yard cleaning costs; and
- $29.51 for the cost of service through Canada Post;

for a total claim of $21,604.06.

The tenant further testified that the City has changed how it collects sewer and water charges, which was on the landlord's property tax bill, but is now a separate bill which the landlords have been collecting from the tenants.

The tenant further testified that on-going harassment by the landlords has increased in the last couple years. The deck needed to be rebuilt, and the tenants got notice at beginning of June that it would be demolished and rebuilt on June 29, 2015. Work started, and rails were taken off, but the patio door was blocked by a contractor or the landlords. The tenant called the landlords about it, but it stayed blocked till end of July. The temperature was 36 or more degrees inside and the tenants were overheating, and the tenant was concerned about safety, telling the landlord that it looked like the sliding door had been damaged and the tenant didn't want to touch it. The landlord said she'd get ahold of contractor but nothing was done and there was no confirmation that the landlord talked to the contractor at all. The tenant also told the landlord that clean-up was required after because prior improvements had been done and the tenants had to clean it up. The landlords didn't do it, and the tenant's brother-in-law helped pick up screws and debris left lying in the grass. The tenants have a 5 year old child.

Subsequent to the deck being finished, the tenants had 2 vehicles parked in the 5 vehicle drive-way. The landlords put a letter in tenants' mailbox saying they had to move both vehicles for contractors. The tenants replied that they couldn't put one on street because it was not insured for that. The landlords gave the tenants a warning letter saying they were in violation of the *Act* because they didn't comply. The tenants again replied that they would park it close it to the house so there would be 4 spots available for contractors, but only one pick-up truck showed up.

The landlords also gave a warning about turning off a tap; it dripped so the tenant shut it off with the valve inside, which is what they always did.

About a year ago the tenants' teenage daughter was sick and home and was startled because she saw the landlord sitting on the tenants' deck, which she did a lot during the tenancy, and was in the tenants' yard all the time. The landlord said she only had to give notice to go inside, not outside. Plants had been removed from the garden that the tenants planted and the landlord said she was removing an evasive species, but only removed one weed. A few big trees were blocking traffic, and 3 were removed, then the tenants had to talk to the landlord about the mud left behind, and the tenants ended up planting grass.

The second tenant testified that May 1, 2015 was the effective date of a rental increase from $1,435.50. Sewer and garbage were added on, but the tenants didn't pay that. The tenants understood that they paid for water but the City changed the way it was billed and the tenants were sent the bills. Copies of the bills have been provided along with a spreadsheet made by the tenants showing the differences in billings and increases during the tenancy.

Once the tenants asked the landlords to unblock the door, there were 4 caution notices sent to the tenants by the landlords, and harassment with frivolous notices. On July 5, 2015 the tenant sent a

letter by registered mail to the landlords saying that they were all disputed and the next day the landlords served the 2 Month Notice to End Tenancy for Landlord's Use of Property. However, the landlords knew the tenants would be away and served it while they were away deliberately to reduce the amount of time the tenants had to dispute it. The landlords own 4 houses and have a lovely home. The rental unit is run down, and the tenant questions the good faith of the landlords.

The tenants request all rent back for the month of July, 2015 for breach of a material term of the tenancy agreement, such as having no heat in the winter, and believes that having no ventilation during a heat wave should also be considered a material term. The patio door was blocked so the tenants couldn't open it. The landlords notified the tenants in April that the deck would be repaired but the landlords waited till Canada Day to have it done, which seems malicious. The tenants had been using a canopy on the deck to block the sun and the landlord removed their ability to do so, then the canopy got ruined on the grass and debris falling from the trees caused 15 holes in the canopy. The tenants do not have a receipt but suggests that it would cost $88.00 to replace a 10 X 10 canopy. The deck was never finished and still isn't.

The tenants claim loss of quiet enjoyment from the landlords' on-gong harassment and loss of plants. The landlord told the tenants they could no longer use garden. The tenants kept responding but the landlords have continually ignored the tenants' rights, repairs, and safety. The landlords also refused to replace smoke detectors, which the tenants ended up buying.

The tenants always have a water party for the kids in the yard for birthdays, and the landlords didn't have the deck finished and the tenants couldn't use the yard. The landlord's letter in April says the deck needed to be done right away, the June 2 letter says it will start June 29, and go to June 30 and July 2.and all would be done July 13.

The tenant further testified that she saw a stranger on the deck, and the landlord was peeking under deck and told the tenant she was going to plant shrubs, but the landlord had already given the tenants permission to plant a garden there. Another time the tenant heard the front tap on and the landlord's husband was watering his shrubs with water that the tenants pay for. It seems they're always there or there's evidence that they have been, such as the gate left open or plants moved. Electronic photographs have also been provided.

The tenant further testified that the deck is a safety issue which the tenant reported to the by-law office and discovered that no permits had been taken out by the landlords.

The landlord testified that the tenancy agreement provides for the tenants to pay utilities. The only things new were the solid waste charge, garbage and organics cart. Those items were never on the property taxes, and there was no additional rent increase; the tenants have been paying it all along. The landlord testified that she is willing to pay for the solid waste charges totaling $214.50 because that was previously on the property tax account. Utilities are the

responsibility of the tenants according to the tenancy agreement. If not paid by the tenant, the amounts are added to the property tax account.

The landlord further testified that the deck work started June 29 and was finished by July 3 except for the vinyl floor. The District sent the landlord a letter about having no permit but the landlord didn't know one was required, and that took 6 weeks. The vinyl floor was to be installed July 13, 2015 but because the tenants were leaving, the landlords scheduled it for when they were gone. The tenants returned home on August 5, 2015. The handrail was put up July 22 and the block on the patio door was removed. The deck currently has raw plywood, but is useable and all that needs to be done is to have it inspected, then the vinyl floor can be installed, and paint the handrail. If the tenants hadn't called the City, it would have been done sooner. The contractor cleaned up after himself, and put the debris in the lot next door that the landlord also owns. The house is 1000 square feet and the deck is about 130 square feet, which loss for the tenants amounts to $94.00 which the landlords would be happy to pay.

The landlord also denies that the deck had anything to do with the loss of a birthday party for the children.

The Residential Tenancy Branch told the landlord several times that the landlords could access the yard whenever they wanted, but couldn't go inside. The landlord denies entering the yard except on a few occasions for repairs. The landlord also denies giving any permission to the tenants to plant a garden. The landlords have received complaints from neighbours and letter carriers about the unsightly yard, and the landlords received a complaint from the municipality about it. A copy has been provided.

The tenants have not been denied an entry; there are 2 front doors and a basement door, and windows open. Only one access was blocked and when the deck was safe to walk on, the block was removed.

The landlord also testified that she attends the rental unit about 12 times per year for repairs and maintenance, not 3 times per month as stated by the tenants' evidentiary material.

Analysis

Firstly, The *Residential Tenancy Act* provides for recovery of a filing fee for the cost of making an application for dispute resolution, but not for costs related to service of documents or time and costs associated with preparing for a hearing. Therefore, the tenants' claims for:

- $1,500.00 for document and preparation costs for this hearing;
- $24.00 for digital evidence; and
- $29.51 for the cost of service through Canada Post

are all dismissed.

With respect to the tenants' application disputing an additional rent increase, I have reviewed the tenancy agreement and it is clear that utilities are not included in the rent: "To pay for all power, telephone, heat and other utilities." I have also examined the bills and spreadsheet provided by the tenants. A landlord may not change the terms of a tenancy agreement even if the City changes the way utilities are collected. The landlord testified that she is willing to pay for the solid waste charges totaling $214.50 because that was previously on the property tax account. I am not satisfied that the tenants have established any more than that because the tenancy agreement speaks for itself.

The tenants' claim also includes $13,399.62 for loss of quiet enjoyment, being 25% of rent paid from July, 2013 to August, 2015 as well as aggravated damages for $4,000.00. I find that they are both one in the same with respect to the circumstances of this tenancy; the tenants claim aggravated damages for loss of quiet enjoyment of the rental unit. In order to be successful, the tenants must establish that the damage or loss exists, that it exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement, the amount of damage or loss suffered, and what the tenants did to mitigate such damage or loss.

The landlord testified that the Residential Tenancy Branch advised on several occasions that a landlord may enter the yard of the rented unit, but not inside. I do not accept that the landlord received all information relevant to this tenancy. Further, the tenancy agreement shows that the tenants rent, "…the above-noted premises…used as a private residence." The *Act* also defines the following:

> **"rental unit"** means living accommodation rented or intended to be rented to a tenant;
>
> **"residential property"** means
>
> (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
>
> (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
>
> (c) the rental unit and common areas, and
>
> (d) any other structure located on the parcel or parcels.

The tenancy agreement specifically states: "2. That the Tenant shall at all times during the term keep and at the expiration thereof leave, according to the standards of a prudent owner, the premises and all fixtures, equipment and furnishings therein and the yard and all outside fixtures, equipment and plants and out-buildings and the like in good repair and condition, reasonable wear and tear and casualty not due to the willful act or neglect of the Tenant only excepted."

The tenancy agreement is also specific with respect to the yard of the property: "The Tenant shall be responsible for yard maintenance. A lawn mower shall be provided. In the event, the Landlord sees that the yard maintenance is not kept up, the Landlord will require the Tenant to

do all yard Maintenance at once. If it is not done within 7 days of such a request, the Tenant agrees that the landlord can hire a gardener to maintain the yard, at the Tenant's expense. The Tenant agrees that if a gardener must be hired, the rent will increase immediately to $1150 monthly to allow for this additional cost."

In the circumstances, I find that the rental unit includes the yard.

The *Residential Tenancy Act* specifies that a landlord may not enter a rental unit rented by a tenant except in certain terms and with notice.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I have reviewed the electronic evidence provided by the tenants, and the landlord is clearly shown using the water of the rental unit paid for by the tenants for the neighbouring property, and I find that the landlords did not comply with the tenancy agreement or the *Residential Tenancy Act*. If the landlords felt the yard was not being maintained properly, the landlords ought to have followed the tenancy agreement, not remove evasive plants or do any other such yard maintenance or show up at the rental unit unannounced and unscheduled and certainly should not be using water that the tenants have to pay for under the tenancy agreement.

I accept that the deck was in need of repair and the landlords had an obligation to complete that, and that the completion took longer than anticipated. I also accept that in order to complete that work, the door needed to be blocked. The tenants did not rent a rental unit with air conditioning, and some inconvenience during such repairs is to be expected, and therefore I do not find that the tenants are entitled to aggravated damages for loss of that entry, given the undisputed testimony of the landlord that there were 3 other exits, and at least some of the windows open. The lack of air flow attested to by the tenants is minimal and such a minor inconvenience does not warrant monetary compensation. However, I am satisfied that the tenants paid rent for a home, and were denied their right to quiet enjoyment of the home they rented from the landlords by numerous visits to the property without complying with the *Act* or the tenancy agreement.

With respect to quantum, I am not satisfied that the tenants have established 25% of rent paid from July, 2013 to August, 2015. I agree that quantum should be based on the amount of rent payable, however the tenants have not provided a detailed account of how many times the landlord used the tenants' water or attended on the rental property contrary to the *Act* or the tenancy agreement, and I am satisfied that the tenants have established the equivalent of 1 month's rent at the current rate of rent of $1,471.39 for each of the 2 years, or $2,942.78.

I am not satisfied that the tenants have established that the option to take the children to another location for a birthday party was as a result of the landlords' failure to comply with the *Act* or the tenancy agreement, or what the food for the party would have cost if the tenants had chosen to use the yard, or that the yard was not useable. Therefore, that portion of the tenants' application is dismissed. Similarly, the landlord disputes that contractors or the landlords didn't clean up debris after improvements, and I find that the tenants have failed to establish the $20.00 claim for yard clean-up.

I am not satisfied that the tenants have established that the landlords should be ordered to comply with the *Act* or the tenancy agreement, and since the tenancy is ending, I decline to make any orders in that regard.

Similarly, since the tenancy is ending the tenants' application for an order that the landlords should be ordered to provide services or facilities required by the tenancy agreement or law is also dismissed.

With respect to the tenants' application to reduce rent for repairs, services or facilities agreed upon but not provided, the landlord agreed that the deck was a part of the tenancy lost by the tenants for a period, and testified that the rental unit is 1000 square feet and the deck is 130 square feet, and, in the mathematical sense amounts to $94.00. My arithmetic shows that the difference, using that square footage is $191.28 per month and the deck still isn't finished. I find that the tenants have established that amount for each of the months of July, August and September, or $573.84.

In summary, I find that the tenants have established a monetary claim as against the landlords in the amount of $214.50 for solid waste charges that were previously on the landlords' property taxes, $573.84 for loss of use of the deck, and $2,942.78 for the landlords' failure to provide the tenants with quiet enjoyment of the rental unit, for a total of $3,731.12.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, the tenants' applications for an order cancelling the notice to end the tenancy for landlord's use of property and for an Order of Possession of the rental unit are hereby dismissed as withdrawn.

The tenants' application for an order that the landlords return the tenants' personal property is hereby dismissed as withdrawn.

The tenants' application for an order permitting the tenants to serve documents in a different way than required by the *Act* is hereby dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlords effective September 30, 2015 at 1:00 p.m.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $3,831.12.

This order is 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: September 25, 2015

Residential Tenancy Branch