



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNR, MNDC, AAT, LAT, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause; for a monetary order for the cost of emergency repairs; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; for an order authorizing the tenant to change the locks to the rental unit; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and the landlord was assisted by an agent. The tenant and her spouse, the landlord and the landlord's agent each gave affirmed testimony and the parties each called 2 additional witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses with respect to the testimony and evidence provided, however only the testimony relevant to the applications before me has been considered and is included in this Decision.

The hearing did not conclude on the first scheduled date and was adjourned for a continuation of testimony. The hearing did not conclude on the second scheduled date and was again adjourned for continuation. The landlord had provided a booklet of evidentiary material amounting to about 30 pages to the Residential Tenancy Branch, however that evidentiary material did not get to me until after the first scheduled hearing date. A search was conducted and the material was received by me before the second scheduled hearing date. Also, some of the evidentiary material provided by the tenant was not received by the landlord or by me. As of the date of this Decision, no further evidence has been received. All evidence of both parties that has been received by me has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment, breach of privacy and loss of facilities?
- Has the tenant established that the landlord should be ordered to allow access to (or from) the rental unit for the tenant or the tenant's guests?
- Has the tenant established that the tenant should be authorized to change the locks to the rental unit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on September 15, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of the tenancy agreement has been provided. The rental unit is the lower level of a house occupied by the tenant and her spouse/family, and the upper level is also tenanted.

On October 4, 2015 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the notice), a copy of which has been provided. The notice is dated October 4, 2015 and contains an effective date of vacancy of October 4, 2015. The landlord's agent stated that he didn't mind if the date of vacancy is changed to November 30, 2015. The reason for issuing the notice is:

- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has not done required, and the following words have been crossed out: "repairs of damage to the unit/site" and replaced with, "removed their stuff from the carport."

The landlord's agent further testified that the tenant and her spouse have been interfering with the tenants in the upper unit. The landlord has received numerous complaints, and the tenant is not cooperating. On one occasion police were called. The landlord wanted peace for everyone and decided to end the tenancy.

A copy of a letter written by the tenants in the upper level has been provided which is a complaint about drunken people at the rental unit and loud noises till late at night. The letter is dated July 29.

Also provided is a letter dated September 24, 2015 wherein the tenants in the upper level complain of a lot of noise and explains that the male tenant from the upper level went to the tenant's rental unit to ask that the noise stop and was assaulted by the tenant's husband. Police were called but no one was charged. The letter also states that they were promised that if the people downstairs do not behave, the landlord would give an eviction notice and if the landlord does not take action, they will find another home. Another letter, dated the same day, and the landlord's agent believes is a continuation of the first letter, states that the tenant and her spouse are sitting outside drinking and are very loud, doing so purposely to be noisy.

The landlord has also provided another complaint letter from the tenants in the upper unit dated September 25, 2015 enclosing an invoice from Kal Tire. The tenants in the upper unit found 2 screws in a vehicle tire and feels it was done by the tenant or the tenant's husband in retaliation for calling the police the day before.

Another complaint is dated October 15, 2015 about a strong smell of marihuana, and another dated October 19, 2015 complaining that the driveway is blocked with the tenant's chairs and tables, as well as fighting noises, banging doors and loud music. The tenant and her spouse have been using the carport as their own area by placing a table and chairs and stereo in it, blocking the parking area for the tenants in the upper level. The landlord has given written notices to the tenant to remove the items.

The landlord has also provided a series of text messages wherein the tenant agrees to end the tenancy but requests an effective date of February or March, 2016. Another is a message to one of the landlord's witnesses from the tenant offering to pay the witness money owed if the witness didn't testify.

The landlord testified that he wants the tenant to move out because she and her spouse party with friends every day, causing trouble to the people living upstairs, so they are not comfortable. The tenant has left a table, chairs and other belongings in the carport which is supposed to be used by the tenants in the upper level, and the landlord gave 2 warning notices about it.

On September 24 the tenants in the upper level called police because the tenant's spouse assaulted him. They complained to the landlord about partying and when the tenant from the upper level went to ask them to be quiet, he was assaulted. The next day the police were called again because screws were in the tire of their car. After that, on October 4, 2015 the landlord gave the tenant a notice to end the tenancy, but didn't talk to police. The landlord was not there and does not live on the property.

The landlord's second witness testified that she is a tenant residing in the upper level of the rental home. The witness had issues with the laundry room since the beginning of the tenancy because the tenant in the lower level did laundry all day, every day and the tenants in the upper level pay for half of the electricity. The witness asked her not to do that, but the tenant didn't care. Finally, the witness put a lock on the door and after some time they agreed to a schedule, but the tenant didn't adhere to it.

The witness also testified that the tenant and her spouse fight a lot and curse, which is heard by the witness' children. It's been going on since the witness moved in. The witness' husband asked one evening for the tenant and her spouse to keep quiet, the parties cursed and the tenant's spouse choked the witness' spouse. The witness' son called the police and the tenant's spouse took off and police didn't find him.

The witness has given about 6 complaints about the tenant and her spouse to the landlord. The tenant has apologized, but the same disturbances keep happening. The police were called again due to a damaged tire of the witness, and the tenant's husband told the witness that he didn't do it. However, the witness asked if perhaps his friends did, and he replied, "Maybe."

The tenant's door is under the carport and the tenant's family comes and goes from there. When the witness rented the upper unit, the landlord said that was the witness' parking space but the tenant has placed recycling and a table in there and have taken over the area to sit outside. The tenant could use the balcony, but sometimes the witness' spouse has to move the table or a chair out of the way in the carport and it's very tight. It's a shared carport but not for recycling and the tenant has a big stereo, speakers and other items that would normally be in a person's living room, and the carport is not that big. It would hold 2 vehicles back-to-back, but not side-by-side even without furniture. The tenant does not have a vehicle and told the witness the first day that the witness moved in that the witness couldn't use it because it would block the tenant's door.

The tenant testified that the landlord told her the tenants in the upper level want the whole house.

The tenant has given the landlord a letter of complaint about how the tenants in the upper unit have disturbed her and her family, but the landlord only listened to one side.

The tenants in the upper unit stomp on the floor when the tenant or her family make the slightest noise, and their house is abnormally silent. The tenant's husband has only had 2 friends over twice since the upper unit was rented.

The tenant moved into the rental unit on September 19, 2014 for rent at \$800.00 per month but has been paying \$820.00 since July, 2015 for utilities. The tenant wrote to the landlord on June 22, 2015 saying that it was being treated as a rent increase and agreed to pay it because no one was living in the upper level. Since September, 2015, the tenant has been paying \$840.00. The landlord wanted to increase rent due to the tenant doing laundry twice per week, but previously it was unrestricted and there was no lock on the door.

On September 19, 20 and 21 the tenant tried to get ahold of the landlord for an emergency repair but couldn't reach him and the landlord didn't return the tenant's calls. A shower cartridge, which connects the shower to the bath, was broken and leaking. The tenant spoke to someone at the Residential Tenancy Branch who said that the tenant could pay for a plumber. On September 22 the tenant told the landlord what had happened and the landlord said that the tenant should not have done that. The next day the landlord gave the tenant a notice telling the tenant to remove belongings under the carport and that guests must be inside, not outside. A copy has been provided.

The tenant also testified that the tenant's husband and the tenant from the upper level had an altercation, however the tenant's husband was injured, and police did talk to him. A few days later the landlord and the tenants from the upper unit arrived at the tenant's door yelling and pounding. The landlord picked up the tenant's chair and threw it. The tenant was very distraught and called police but didn't press charges, and wrote a letter to the landlord saying it was not okay to act that way.

The tenants in the upper level have restricted the tenant saying that the tenant's family has to access their rental unit from the other side, but their main door is in the carport. They also told the tenant that the tenant has no rights because the landlord gave them full control since they live upstairs.

It's unfair for the landlord to evict the tenant for issues that he's never been witness to, and when the tenant requested reimbursement for the shower part, the landlord agreed but instead issued the notice to end the tenancy.

The tenant seeks an order cancelling the notice and has provided a Monetary Order Worksheet setting out the following claims:

- \$367.50 for emergency plumbing repairs, and a receipt has been provided;
- \$200.00 for loss of quiet enjoyment due to a verbal assault by the landlord and for throwing a chair across the carport;
- \$150.00 for loss of quiet enjoyment due to the landlord allowing upstairs tenants to unreasonably disturb the tenant;
- \$60.00 for reduced laundry use;
- \$80.00 for discontinued storage space;
- \$100.00 for breach of privacy due to the landlord turning the doorknob to enter the rental unit without 24 hours notice;
- \$60.00 for discontinued laundry from October 16 to November 7, 2015; and
- \$50.00 for recovery of the filing fee;

for a total of \$1,081.75.

The tenant's husband testified that awhile after the tenants in the upper level moved in they told the tenant and her husband that they had full control and had to give the tenant permission of which way they can enter or exit the property, and that the property was their responsibility.

The tenant and her husband used a table and chairs in the carport as a smoking area, which was never an issue, until one time, when the tenant in the upper level got out of his truck, he banged the stereo with his truck door and then kicked it over. Now there's a small table in there leaving plenty of room for their car.

At the commencement of the tenancy there was no lock on the laundry room door, but after awhile the tenants upstairs tried to regulate laundry days and then times. On one occasion the tenants went to do laundry and the tenant from the upper level had unplugged it which flooded the carport and part of the tenant's rental unit.

He also testified that in evenings even before 10:00 the tenant's family has to whisper or the neighbours thump upstairs. They can't have music on softly at night or a movie and the tenants upstairs said they recorded the tenant's kids, which doesn't seem right. The tenants have had company twice but only on a weekend and about 10:30 they'd leave. There's no partying all night long. The tenants also say the tenant's family scrapes chairs across the floor, and thump and bang, but he explained the scraping noise was the door, and the tenant upstairs helped to fix it.

A witness for the tenant (LM) testified that she has known the tenant and her husband for about 17 years and has always known them to be respectful.

On September 26, 2015 the witness was talking on the phone with the tenant and the witness heard other people. The tenant told the witness that the landlord was there and yelling, and the other voices were people in the upper unit yelling, banging and being quite noisy.

On another occasion, October 16, 2015 the tenant and the witness were talking on the phone and the witness heard loud banging and thumping noises and could hear the neighbour upstairs yelling and swearing at the tenant.

Another witness for the tenant (KA) testified that he has known the tenant and her husband four about 4 years, and was previously a landlord of the tenant. The tenant's spouse also did some work for the witness, and the parties were neighbours.

The witness has visited the tenant at this rental unit. The carport was not blocked, and the witness drove right in to pick up the tenant's husband to go to work with the witness.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*, although the effective date of vacancy cannot be earlier than November 30, 2015. With respect to the reason for issuing it, the landlord's agent submitted that the landlord ought to have the discretion to decide which tenant receives the notice in such circumstances. I wouldn't go that far, however, it is not for me to decide who started the problems, or who was the most aggressive. The issue before me is whether or not the landlord has established the reasons set out in the notice.

The *Residential Tenancy Act* specifies the reasons a landlord may issue a 1 Month Notice to End Tenancy for Cause, and the reasons contained on the form are those reasons. A landlord may not amend them, and therefore, I find that the second reason for issuing it is not a reason sanctioned by the *Act*.

With respect to the first reason for issuing it, "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord," I find that both the upper level tenants and the lower level tenants have disturbed each other. I have reviewed the evidentiary material and the landlord has warned the tenant of mis-use of the carport, loud noises and disturbances. In the circumstances, I am satisfied that the landlord had cause to issue the notice, and the tenant's application to have it cancelled is dismissed.

The landlord did not make an oral request for an Order of Possession during the hearing.

Where a party makes a monetary claim against another party, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

In this case, the tenant seeks monetary compensation for emergency plumbing repairs, loss of quiet enjoyment, breach of privacy, loss of laundry facilities and storage space. With respect to the claim for emergency plumbing repairs, the tenant testified that she called the landlord on 3 consecutive dates before calling the Residential Tenancy Branch for advice but couldn't reach him and he didn't return the tenant's calls. The landlord didn't dispute that. The *Act* requires a landlord to leave an emergency contact number with a tenant in a conspicuous place, and the tenant may make emergency repairs only as set out in the *Act*:

- 33** (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.
- (2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I find that the repair done by the tenant qualifies as emergency repairs, and the tenant has established a claim in the amount of \$367.50.

I find that the \$100.00 claim for loss of privacy and the \$200.00 claim for a verbal assault by the landlord and for throwing a chair across the carport both amount to damages to punish the landlord for wrong-doing. The *Act* does not permit me to make such orders.

With respect to loss of quiet enjoyment of the rental unit, it's clear that the tenant was resident on the 2-suite property first, and the landlord does not reside there. A landlord cannot change the rules about which door to use, how guests of the tenant enter the rental unit, or use of a carport after a tenancy begins in order to offer it to newer tenants, and I find that that is what has happened. There is no dispute that there were no restrictions on laundry or storage space or the carport until the new tenants moved into the upper level, and, having read the material provided by the parties, I see no evidence of the landlord ever cautioning or notifying the tenants in the upper level of complaints received from the tenant in the lower level. Therefore, I find that the tenant's claim for \$150.00 is justified. I accept the testimony of the tenant that access to the laundry facility has been restricted and then removed, and that laundry had to be done on some occasions outside the rental unit. I also accept that the carport and storage space in the laundry room were facilities removed contrary to the *Act*, and the tenant has established the claims for \$200.00 (\$60.00 reduced laundry + \$60.00 discontinued laundry facilities + \$80.00 discontinued storage space and carport).

Since the tenancy is ending, I decline to order that the landlord comply with the *Act*, regulation or tenancy agreement or for an order permitting the tenant to change locks to the rental unit. I also dismiss the tenant's claim for a reduction in rent.

Since the tenant has been partially successful with the application the tenant is also entitled to recovery of the \$50.00 filing fee.

In summary, I dismiss the tenant's application for an order cancelling the 1 Month Notice to End Tenancy for Cause; I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and I dismiss the tenant's application for an order authorizing the tenant to change the locks to the rental unit. I grant a monetary order in favour of the tenant for \$367.50 for the cost of emergency repairs, \$150.00 for loss of quiet enjoyment, \$200.00 for restricted or loss of facilities, and \$50.00 for recovery of the filing fee, for a total of \$767.50.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed.

I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$767.50.

The tenant's application for an order that the landlord allow access to (or from) the rental unit for the tenant or the tenant's guests is hereby dismissed.

The tenant's application for an order authorizing the tenant to change the locks to the rental unit is hereby 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: December 04, 2015

Residential Tenancy Branch

