



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FF LAT MNDC OLC PSF RP RPP

Introduction

This hearing dealt with an application by the tenants pursuant to the *Residential Tenancy Act* for orders as follows:

1. An Order cancelling the landlords 1 Month Notice to End Tenancy dated December 17, 2015
2. An Order allowing the tenants to change the locks that allow entry to the rental units.
3. An order that the landlord comply with the Act, regulation and tenancy agreement;
4. An Order that the landlord provide services or facilities required by the tenancy agreement or law;
5. An Order that the landlord make repairs to the units, site or property.
6. An Order that the landlord return personal property.
7. A Monetary Order for loss of quiet enjoyment of the rental units;
8. To recover the filing fee from the landlord for the cost of this application pursuant to section 72.

The tenants filed their Application for Dispute Resolution on December 20, 2015 and an Amendment to an Application for Dispute Resolution on January 16, 2016.

Both parties attended the hearing and had an opportunity to be heard. However, at the outset it was discussed that the landlord had not submitted any documentary evidence. The tenant on the other hand had submitted two evidence packages both of which were properly served on the landlord.

For her part, the landlord acknowledged that she had missed the deadline for submitting her evidence package for this hearing and therefore decided to file her own Application for Dispute Resolution together with the evidence that should have been included for today's hearing. The landlord's application is scheduled to be heard at 1:30 p.m. on March 16, 2016.

Issue(s) to be Decided

Are the tenants entitled to any or all of the requested orders?

Background and Evidence

This application involves two separate tenancies with the same landlord. The residential property is comprised of a small organic farming operation upon which is located three separate living units or houses. By the description offered by both parties, the homes are more rustic in nature and as a result, are available at lower than average rents. The landlord resides in one of the homes and the tenants

reside in the other two. The female tenant lives with her four children and the male tenant resides alone. The tenants are not related and did not know each other prior to becoming tenants of the same landlord.

The tenancy with the male tenant began on August 15, 2015. The rent for this tenancy is \$625.00 per month including electricity. The tenancy for the female tenant began on October 10, 2015. The rent is \$1080.00 per month excluding electricity.

On December 17, 2015 the landlord served each of the tenants with a 1 Month Notice to End Tenancy. The tenants disputed the Notices on December 20, 2015.

When these tenancies began, the parties were all of the same mind, it seems, that they would live together in a cooperative framework that would see the tenants sometimes helping with the farm and being at ease with various animals wandering about the property including chickens, dogs, cats and so on. Apparently all was going well for a time but things went off the rails when the landlord approached the female tenant with the hydro bill. It is not clear from the evidence precisely when the landlord delivered the hydro bill to the tenant but I glean that it was sometime in November. According to both parties the hydro bill was for all three homes. The landlord testified that this was the arrangement she had with the female tenant but the female tenant testified that while her hydro was not included in her rent, she never anticipated that she would be paying the hydro for all three houses. The landlord testified that she subsequently received 16 emails from the female tenant that were "hostile and aggressive" and that the emails significantly affected her in a negative way.

In addition to the above event, the tenants claim that the landlord has been entering their homes without notice both when they are home and not home. The female tenant even claims that the landlord has removed an article of clothing from her home while she was out. The landlord "categorically" denies all claims that she has ever entered their homes without notice or without their knowledge.

The female tenant also claims that the landlord has failed to replace the washing machine in her home despite repeated requests to do so. The male tenant has also requested that the landlord provide him with a stove and fridge as agreed to in the tenancy agreement. The male tenant also wants his own hot water tank instead of having to use the same hot water tank as the female tenant.

And finally, both tenants complain of a rat infestation in and around the homes. The tenants want the landlord to do a proper extermination of the rats.

Analysis

The tenants have requested numerous orders. I shall deal with each request in turn.

Order Cancelling 1 Month Notice – The tenant has asked that the landlord's Notice to End Tenancy be cancelled. When a tenant disputes a Notice, the burden shifts to the landlord to prove the allegations contained in the Notice. As I explained to the parties, the landlord need not prove each and every allegation made in the Notice, but rather must be able to prove at least one of the allegations in order for the Notice to stand.

In the present case, the Notice indicates the following reasons for serving the tenants with the Notice:

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so (female tenant only received this allegation)
- Tenant has significantly interfered with or unreasonably disturbed the landlord
- Tenant has seriously jeopardized the health or safety or lawful right of the landlord

The landlord had initially indicated on the Notice that the tenants had engaged in illegal activity but these allegations were retracted by the landlord at the hearing when the concept of what “illegal activity” entailed was discussed.

My analysis of the other allegations is as follows.

Breach of Material Term – The landlord alleges that the tenant’s failure to pay the hydro bill for the entire residential property is a breach of a material term of the tenancy agreement. I have reviewed the tenancy agreement and while I see that the agreement specifies that electricity is not included in the rent, I fail to see where it states that the tenant is liable for the electricity for everyone. While the landlord claims that paying the full electricity bill has always been the responsibility of the tenant who resides in the female tenant’s unit I am not satisfied that the tenant was at all aware that this was the case. Further, if this was the agreement that the landlord believed she had with the tenant, I find that this should have been expressly stated in the tenancy agreement rather than tacitly expected by the landlord given that such an arrangement diverges from the norm. In the result, I find that the landlord has not established, on a balance of probabilities, that the tenant has breached a material term of the tenancy agreement.

Significant interference/Unreasonable disturbance of landlord – The landlord claims that the emails she received from the tenant following presentation of the hydro bill have caused her significant stress. The landlord also testified that she has been the subject of derogatory remarks from both tenants and that they are alleging she is mentally unstable in a public manner: by contacting former tenants for example. The landlord also testified that she had hoped for a cooperative arrangement with her tenants and what she has now is one of hostility and aggression.

For their part, the tenants dispute the landlord’s characterization of their emails and behaviour and counter that the landlord is the one who has created the discord. The tenants’ position is that they just want to have quiet enjoyment of their rental units and proper attention to maintenance issues.

Upon review of all the evidence before me on this issue, I find that the landlord has not established that she has suffered significant interference or unreasonable disturbance on a level that would justify an end to the tenancy. I accept that relations between the parties have become strained but that the landlord has, in my view, been the author of her own misfortune. I accept that some of the actions of the tenants, mainly by written word, have been unfortunate and unnecessarily aggressive but that much of this would have been avoided if the landlord had been more businesslike and clear in her role as landlord.

Order Authorizing Tenant to Change Locks – The tenants claim that the landlord has been entering their units when they are not there. The female tenant testified that it is “very upsetting and disturbing to know that she has been there without notice to me.” The female tenant testified further that she feels “unsafe” because she now assumes that the landlord is going into their homes when they are not home. For this reason, the tenants seek an order allowing them to change the locks to the rental units.

The landlord on the other hand “categorically” denies entering into their units. The landlord claimed that all notices were properly given and that any entries into the units were done pursuant to those notices.

In other words, the testimony of the parties is directly contradictory on this point.

However, based on the totality of the evidence in this case, including a detailed three page letter submitted by the male tenant, I am satisfied that the landlord is likely to enter the rental units other than as authorized under Section 29 of the Act. I find the detailed descriptions offered by the tenants as to why they believed there had been unauthorized access credible and reliable.

Therefore, pursuant to Section 70(2) of the Act, I authorize the tenants to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry to the rental unit.

Order that Landlord Comply - As stated above, the tenants believe the landlord has been entering their units without giving proper notice. I have already authorized the tenants to change the locks on their rental units and I hereby order the landlord to comply with the notice provisions of Section 29 of the Act in all cases where access to the units is required.

Order that the Landlord Provide Services or Facilities – Section 27 of the Act provides as follows:

Terminating or restricting services or facilities

27 (1) A landlord must not terminate or restrict a service or facility if

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- (b) providing the service or facility is a material term of the tenancy agreement.

In the present case, both of the tenants claim that services and facilities that were contained in their tenancy agreements have not been provided to them by the landlord or that, if initially provided, have fallen into disrepair.

The female tenant claims that the washing machine in her rental unit is no longer working and needs replacement. The female tenant's tenancy agreement stipulates that “free laundry” is included in the rent. Based on these facts, I find that the landlord is obliged to provide the tenant with “free laundry” whether that be by providing access to a laundry machine or by replacing or repairing the laundry machine in the tenant's rental unit. I order the landlord to take steps to address this matter immediately and in all events no later than March 18, 2016.

The male tenant has requested an order that the landlord make available certain services and facilities that he was promised the outset of the tenancy. Specifically, the male tenant wants his own hot water tank (rather than sharing the one in the female tenant's unit), a proper stove and a proper fridge. The male tenant explained in his written submission that he agreed to move into the unit even though there was no proper stove or fridge because the place was undergoing renovations. However, the male tenant claims he believed that proper appliances were going to be provided and were, in fact, listed as being included in the rent in his tenancy agreement.

In response to this, the landlord testified that the male tenant “was more than agreeable to the way the unit was when he rented it” and that “due to the electrical service to [his] unit, I cannot put in a full stove, fridge and water heater”.

Upon review of the evidence on this point, I see that the electrical service to the male tenant’s unit is apparently not up to code which is why the appliances the male tenant has are not full size and why there is no hot water tank. However, the tenancy agreement does state that water, electricity, stove and oven and refrigerator are included in the rent. To my mind, this means that the tenant did not expect to be cooking on a hot plate and using a bar fridge for the duration of his tenancy. The tenant states in his written submission that he was “under the impression from the posting for the suite that the suite would be ‘all inclusive’”. Indeed – this is what the posting for the unit says. In addition the posting says that a “new CSA wood stove will be installed this fall”. But according to the tenant, the wood stove sits in the unit – unusable – because it has not been “CRD inspector approved.”

As a result, I find that the provision of a stove, oven and refrigerator is a material term of the tenancy agreement and that the landlord must provide these facilities to the tenant. I am not satisfied, however, that the male tenant is entitled to his own hot water tank. The tenancy agreement stipulates that water is included in the rent but it does not say “hot water tank”. As a result, I decline to order that the male tenant be provided with a hot water tank in his unit.

Order that Landlord Make Repairs – Section 32 of the Act says as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

....

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The tenants claim that repeated requests to the landlord to make repairs to the rental units have gone unanswered. I have reviewed the evidence in this regard and find that the repairs requested are actually already covered in the section above on provision of services and facilities. As a result, I will not make a further order to make repairs.

I am satisfied however based on the totality of the evidence before me that there is a significant rat infestation in and around the rental units. Accordingly, I order that the landlord engage a professional pest control company to address the rat infestation by no later than March 25, 2016.

Order that Landlord Return Personal Property – The female tenant claims that the landlord took a shirt from her during one of her unauthorized entries into the rental unit. The landlord denies taking the shirt.

So it is one person's word against another's and no other evidence to support either person's testimony. I find that I am unable to determine whether the landlord took the tenant's shirt or not. Accordingly, I dismiss this portion of the tenant's claim. I urge the parties to work this out on their own

Monetary Order for Loss of Quiet Enjoyment – The tenants have claimed compensation in the amount of \$4,285.00 for loss of quiet enjoyment of their rental units and in the case of the female tenant, compensation for the landlord's failure to provide a working washing machine for the month of January. This claim breaks down as follows:

2 months' rent for female tenant (Nov & Dec)	\$2160.00
2 months' rent for male tenant (Oct, Nov, Dec)	\$1875.00
Loss of use of washing machine (January)	\$ 250.00
TOTAL	\$ 4285.00

The tenants' claims for return of their rents for two and three months, respectively, of last year are made pursuant to Section 28 which provides as follows.

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.

Upon review of all the evidence in this case, I observe that the expectations of the parties upon entering into these tenancy agreements were at odds. While the landlord was, in my view, envisioning a more relaxed, spiritual, cooperative framework with her tenants, the tenants were looking for reasonably priced housing and were less interested in cooperative farming and spiritual pursuits. As a result, the personality clashes have been significant and have left everyone, the landlord included, in a state of unhappiness. That being said, the landlord has, in my opinion, behaved in a manner that has breached the tenants' right to quiet enjoyment of their units.

In my view, the appropriate award in this case is \$900.00 (3 months x \$300) for the male tenant and \$600.00 (2 months x \$300) for the female tenant. I have awarded the male tenant proportionately more per month as a result of the absence of proper appliances in his rental unit. I further award the female tenant \$25.00 for the absence of laundry facilities for the month of January.

Conclusion

I order that the landlord's 1 Month Notice to End Tenancy dated December 17, 2015 be and is hereby cancelled. The tenancy will continue according to its original terms.

I authorize the tenants to change the locks, keys or other means that allow access to the rental unit and prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry to the rental unit.

I order the landlord to comply with the notice provisions of Section 29 of the Act prior to entering the rental units.

I order the landlord to provide the male tenant with a regular sized stove, oven and refrigerator by no later than March 31, 2016.

I dismiss the male tenant's request for his own hot water tank.

I order the landlord to repair or replace the washing machine in the female tenant's unit or provide alternative laundry facilities by no later than March 18, 2016.

I order the landlord engage a professional pest control company to address the rat infestation in and around the rental units by no later than March 25, 2016.

I order the landlord to pay to the male tenant the sum of \$900.00. The tenant may deduct this amount from a future rent payment.

I order the landlord to pay to the female tenant the sum of \$625.00. The tenant may deduct this amount from a future rent payment.

I order the landlord to pay to the tenants the sum of \$50.00 for the cost of this application. Each tenant may deduct \$25.00 from a future rent payment.

In the event that either or both of the tenants vacate their rental units prior to being able to deduct the above awards from their rents, I have provided monetary orders to the parties together with this decision. These orders may be filed in Small Claims Court and enforced as orders of that Court.

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: March 9, 2016

Residential Tenancy Branch

