Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, O, OPR, OPB, MND, MNR, MNSD, MNDC, ET, O, FF

Introduction

In the first application the tenant seeks to cancel a one month Notice to End Tenancy and a ten day Notice to End Tenancy for unpaid rent or utilities. She also seeks "other" unspecified relief.

In the second application the landlord seeks an order of possession pursuant to two ten day Notices to End Tenancy, the first given for unpaid utilities, the second given for unpaid rent. She also seeks a monetary award for damage to the rental unit, for unpaid rent and utilities, to keep deposit money and for liquidated damages for a flood, denial of access to the premises by the tenant and anticipated loss of rental income if the tenancy ends. Last, she seeks an early end to the tenancy.

At hearing the parties agreed the tenant had paid the utility and rent amounts demanded in the two Notices within the statutory time limit. By operation of s. 46(4) of the *Residential Tenancy Act* (the "*RTA*") those two Notices are now of no effect.

Neither party referred to a one month Notice to End Tenancy for cause during the hearing and it would appear that the landlord had never issued one to the tenant.

It was agreed that the landlord's claims for BC Hydro and "water overage" charges have been satisfied.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenant is entitled to some “other” relief? Does is show that the landlord is entitled to a monetary award against the tenant or an early termination of the tenancy?

Background and Evidence

The rental unit is a four or five bedroom house. The tenancy started in December 2014 for a fixed term ending July 15, 2016. The written tenancy agreement requires that the tenant move out at the end of the fixed term. The monthly rent is $1875.00. The landlord holds a $937.50 security deposit and a $500.00 pet damage deposit.

The tenant to the knowledge of the landlord cares for two foster children and has three respite care children with her for about three days every week.

In support of her claim for an early termination of the tenancy the landlord alleges that the tenant,

1. Has an excess number of occupants,
2. Has failed to maintain the house,
3. Has failed to repair damage at the front entry,
4. Has blocked landlord access to inspect the premises, and
5. Has blocked a realtor’s entry to the premises

The landlord says that her relationship with the tenant was good until last summer when they fell into a dispute about the removal of grass clippings from the yard.

In December, the tenant reported a “flood” in the home. The landlord immediately arranged for a plumber and contacted her insurer. As it turns out, water from the Jacuzzi tub in an en suite bathroom had run down, into and through the ceiling of an eating area below.

The tenant was fully cooperative in having the repairs done, permitting the landlord’s workers easy access to the rental unit.

However, the landlord says, after a late December visit by the landlord the tenant bridled at and refused the landlord’s attempts to arrange for her entering the premises again. After one official notice to enter given by the landlord, the tenant responded that if the landlord attended at the appointed time the tenant would call the police.

The landlord says she needs to re-attend at the rental unit in order to get carpet samples so that her workers can install the proper flooring.

Despite this difficulty, the landlord’s workers continued to have free and open access to remediate the water damage.

The tenant says that she took advice from the Residential Tenancy office to the effect that a landlord could not give repeated notices to enter to inspect premises. Once a month was reasonable. She says she did not want the landlord in her home because she did not care for the demeanor or character of the landlord. She says that the people at the Residential Tenancy office told her to call the police if the landlord attended.

The landlord says the tenant caused a scratch in the wall of the entry area when she moved in and that she has failed to repair the damage.

The tenant says the landlord wants her to paint the entire entry room. It is a major task and she wants to leave it to the end of the tenancy.

The landlord says the tenant has young children in the home every weekend that it is in violation of clause 44 of the tenancy agreement. Clause 44 says

> 44. OTHER <u>3 (respite) foster children up to 3 days/week</u>

She says the tenant told her the children are there all the time.

The tenant says the landlord knew from the start her foster child and respite care contractual arrangements with the government and nothing has changed. She has two

full time foster children and cares provides respite care for three others, three days a week.

The landlord claims $1800.00 for anticipated rent loss if the tenant is evicted.

She claims $900.00 as liquidated damages to compensate for the flooding caused by the Jacuzzi tub.

She claims $900.00 as liquidated damages for the tenant's failure to carry out maintenance and for inhibiting landlord access to the rental unit.

She claims $25.00 for an NSF fee on a rent cheque. The tenant says the cheque was not NSF; she stopped payment on the cheque.

In her Monetary Order Worksheet the landlord also claims unspecified amounts for the tenant's alleged failure to mitigate damage after the flood, for gas and income loss to prepare for and attend the hearing and for potential costs incurred if she has to put Hydro in her name.

Analysis

Early Termination of the Tenancy

Section 56 of the *RTA* deals with early termination orders. It provides:

> **56** (1) A landlord may make an application for dispute resolution to request an order
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> (a) ending a tenancy on a date that is earlier than the tenancy would end if notice to end the tenancy were given under section 47 *[landlord's notice: cause]*, and
>
> (b) granting the landlord an order of possession in respect of the rental unit.
>
> (2) The director may make an order specifying an earlier date on which a tenancy ends and the effective date of the order of possession only if satisfied, in the case of a landlord's application,
>
> (a) the tenant or a person permitted on the residential property by the tenant has done any of the following:
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
>
> (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
>
> (iii) put the landlord's property at significant risk;
>
> (iv) engaged in illegal activity that
>
> (A) has caused or is likely to cause damage to the landlord's property,
>
> (B) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(C) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(v) caused extraordinary damage to the residential property, and

(b) it would be unreasonable, or unfair to the landlord or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 *[landlord's notice: cause]* to take effect.

(3) If an order is made under this section, it is unnecessary for the landlord to give the tenant a notice to end the tenancy.

Having an excess number of occupants is not a listed reason for an early termination of a tenancy and so this ground fails. It should be noted that given the persons listed in the tenancy agreement, it has not been proved that the tenant has more than that number occupying the premises.

The landlord's claim that the tenant has failed to maintain the home is also not a ground listed in s. 56, above, for justifying an early termination of the tenancy. It cannot reasonably be said that the tenant is putting the landlord's property at significant risk. That ground must fail.

The tenant has not caused "extraordinary damage" to the landlord's property and so that is not a valid ground for early termination of the tenancy.

However, the tenant has caused some minor damage to the wall in the entryway and she is responsible for having it repaiedr. Additionally, a landlord is not required to wait until the end of the tenancy for the tenant to conduct that repair. From the picture of the scratch, I tend to agree with the tenant that any requirement that she paint the entire wall or room is excessive. She is responsible to see that the scratch is filled, sanded and that it is painted over with the same paint used on the walls of the room. The landlord should be in a position to provide the tenant with the type and colour/number of the paint the tenant should use.

The tenant has been cooperating with the landlord's workmen but indicating she would refuse the landlord entry. She appears to have been operating under a belief that her refusal was lawful based on the response of the Residential Tenancy Branch. The landlord has accepted the tenant's refusals and has not attempted to assert her rights by attending and demanding entry on the specified notice dates.

It may be that a landlord must limit her attendances at a rental unit for the purpose of general inspections but that is not the situation her. The landlord's workmen are

attending to carry out repairs that the landlord is responsible to carry out. The landlord is perfectly entitled to oversee those repairs if she wishes. If the tenant insists on a formal notice to enter then the landlord must comply. It should be noted however that a tenant exercising her right to notice runs the risk that she might found to be doing so obstructively or frivolously, and that may be affect her right to claim for damages for the any extraordinary inconvenience caused by the repair work.

In all the circumstances I do not agree that the tenant is yet significantly interfering with the landlord and so this ground for early termination fails.

Similarly, the tenant may have indicated her unwillingness to have a realtor attend at the home. Nevertheless, with proper notice, she cannot lawfully refuse. If she considers such a visit or the number of visits to be an extraordinary interference with her use of the premises she is free to make an application for compensation in that regard.

In result, the landlord has no good grounds for ending the tenancy early. Even if a ground had been established, I find that the landlord would not have been able to surmount the second part of the test, namely that it would be unreasonable or unfair to required the landlord to wait the normal one month notice period associated with a termination notice for cause under s. 47 of the *RTA.*

The Landlord's Monetary Claims.

The landlord intimates that the flood incident was caused by the tenant's misuse of the Jacuzzi tub. I find that not to have been proved. Indeed, the landlord's own evidence is that the workmen discovered that the overflow drain pipe on the tub was leaking. There is no ground to suspect the tenant caused that. The landlord's claim for liquidated damages or any damages for this item is dismissed.

The landlord anticipates a rental loss. Her claim in that regard is premature. As matters now stand, barring some other incident, this tenancy will run its course to July 15, 2016. There is no basis to conclude the landlord will suffer a rent loss. This item of the claim is dismissed.

The landlord claims liquidated damages for the tenant's alleged failure to do maintenance and preventing landlord access to repairs. It should be noted that clause 5 of the tenancy agreement "Liquidated Damages" refers to the amount of $900.00 payable as liquidated damages in the event the tenancy ends early by the actions of the tenant. The amount is designated as covering the anticipated cost of the landlord's

outlay in having to re-rent the premises. It does not apply to the circumstances here, involving maintenance.

In any event, the landlord has not shown she has suffered any particular loss by the delay in determining floor covering for the en suite bathroom. I dismiss this item of the claim.

Additionally, if a tenant fails to perform a maintenance obligation, a landlord is free to seek the cost of it from the tenant. No such cost or other outlay has been proved here. This item is dismissed.

The landlord claims for gas, income loss and photocopying costs related to this hearing. No figures or receipts were put forward during the hearing. Those items are in the nature of "costs and disbursements" and it is my understanding that the *RTA* limits an arbitrator's powers in that regard to the awarding of the filing fee. This item of the claim is dismissed.

The landlord claims an unspecified amount for anticipated hook up fees. That claim is only anticipated and so is premature. Should such a cost actually be incurred, the landlord is free to re-apply.

The landlord claims for a $25.00 NSF fee. The tenant says it wasn't an NSF fee; she stopped payment on the cheque. Clause 10 of the tenancy agreement "ARREARS" states that "late payment, returned or non-sufficient funds (NSF) cheques are subject to an administrative fee of not more than $25.00 each," plus any financial institution charge.

The landlord has not claimed the financial institution charge.

Whether the tenant stopped payment on her rent cheque or whether it was NSF, the tenant has run afoul of Clause 10. The rent was late. The cheque was dishonoured; it was "returned." The landlord is entitled to charge $25.00 for having to deal with the bad payment. I grant the landlord a monetary award of $25.00 and authorize her to recover it from the security deposit she holds, in full satisfaction of the award.

The Tenant's "Other" Claim

The tenant has advanced a claim for “other” relief. The only item that can fairly be considered to describe the substance of that claim is the fact that the landlord has changed the mailbox he and not given the tenant a new key.

As stated at hearing, the community mail box or “super box” serving the neighbourhood is a postal facility for that community. The landlord gave the tenant a key for the mailbox belonging to the rental unit. It was a service or facility included as part of the tenancy. By changing locks and prohibiting the tenant’s use of the box the landlord has withdrawn a service or facility. I recommend that the landlord immediately provide the tenant with a key for the mail box. If she fails to do so, the tenant is free to apply for compensation for loss of that service or facility.

The landlord may wish to continue to receive mail at that box, though she is not living in the community. That is an arrangement she must negotiate with the tenant.

Conclusion

In result, the tenant’s application is dismissed.

The landlord’s application is dismissed but for the award of $25.00 to be recovered from the security deposit.

In all the circumstances of this case I decline to make an award for recover of either party’s filing fee.

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 01, 2016

Residential Tenancy Branch