



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, RP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and for an order that the landlords make repairs to the unit, site or property.

The landlords had requested to adjourn the hearing from its originally scheduled date, and the tenants consented. The hearing was adjourned to this date for hearing.

One of the landlords and both tenants attended the hearing, and the landlord was accompanied by legal counsel. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant advised that evidentiary material provided by the landlord, being copies of receipts, was not provided to the tenant until yesterday. Counsel for the landlord corroborated that, however the tenant did not oppose inclusion of the evidence.

Issue(s) to be Decided

- Have the landlords established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- 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 loss of use of the dishwasher, and loss of quiet enjoyment of the rental unit?

- Should the landlords be ordered to make repairs to the dishwasher?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 30, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$1,350.00 per month is payable on the 1st day of each month and there are no rental arrears. The rental unit is a 6 bedroom home. The rental unit and the landlords' residence are both located on the landlords' farm. The tenants couldn't afford the monthly rent of \$1,800.00 per month so at the beginning of the tenancy the landlords agreed to rent in the amount of \$1,350.00 per month in lieu of the tenants contributing 20 hours of extra work per month on the landlords' farm.

The landlord further testified that on December 1, 2015 the landlord posted a 1 Month Notice to End Tenancy for Cause to the door of the rental unit. A copy has been provided and it is dated January, 2016 and contains an effective date of vacancy of February 10, 2016. The day of the month in January is left blank in the notice. The reason for issuing the notice is: Tenant is repeatedly late paying rent.

Counsel for the landlords referred to receipts provided by the landlords for this hearing. The tenants paid \$1,000.00 on March 1, 2014, and the balance of \$350.00 on March 5, 2014. In April, 2015 the tenants paid \$1,250.00 cash on April 1, 2015 and the balance of \$100.00 on April 2, 2015. The tenants also paid \$800.00 in cash on July 1, 2015 and the balance of \$550.00 on July 2, 2015. In December, 2015 the tenants paid the full amount of \$1,350.00 on December 5, 2015.

Counsel also submitted that the relationship between the parties deteriorated in 2013 when the tenants ran out of propane and the landlords paid for delivery of it expecting to be repaid by the tenants. Propane is not included in the rent, but it was November and cold out. The landlords paid \$405.00 for the propane as well as an after-hours service call of \$285.00. The tenants did not pay it back.

With respect to the tenants' claim for damages, the landlord agrees that the dishwasher required repair, but the repair person who looked at it said that it had been damaged by freezing or tampering. The landlords are prepared to repair it at their expense.

The tenant testified that the tenancy is not a month-to-month tenancy, and has been renewed. The current term expires on April 30, 2016 thereafter reverting to a month-to-month tenancy. The tenants have provided a copy of the tenancy agreement.

In December, 2015, the tenant told the landlord that the bank was going to withhold \$300.00 of the tenants' account so they could only pay a portion on the first of the month. The landlord replied that a notice to end the tenancy would be issued and refused any portion of the rent until it was paid. On December 5, 2015 the tenants paid all of the rent. The tenant agrees with the late payments or partial payments in April and July, 2015.

The 1 Month Notice to End Tenancy for Cause was posted to the door of the rental unit on January 10, 2016.

With respect to the tenants' claim for monetary compensation, the tenant testified that the tenants have been without a dishwasher since November 15, 2015 and the landlords have been aware of it. The tenants claim \$50.00 for November/December, 2015 and \$50.00 for December, 2015/January, 2016 for loss of use of that appliance.

The balance of the tenants' monetary claim is with respect to loss of quiet enjoyment and privacy. The parties have had minor issues during the tenancy but over the last several months the tenants don't feel comfortable. The tenant testified that his anxiety has increased and he can't have a conversation with the landlords without getting into an argument. The landlords stare into the tenants' yard, and when issues come up, no matter the tenants' response, the issues escalate.

The tenants have provided hand-written notes setting out the following allegations, in short, about the landlords' behavior and the tenants' monetary claim:

- Entering the rental property weekly by the back door rather than the front;
- Questioning the tenants' guests and making rude comments to them;
- Refusing the tenants storage in the barn, which was agreed to;
- Accusing the tenants of stealing;
- Entering the gated rental property with a tractor and with a dump truck, without notice to the tenants;
- Failure to install a fresh air return to the furnace on advice of repairmen;
- Failure to change the furnace filters in the rental unit;
- Accusing the tenants of purposely causing damage to the dishwasher and septic tank;
- Reiterating to the tenants that the landlords could make more money if the tenants moved out;

- Allowing farm animals to mate in pens that landlords promised at the beginning of the tenancy would not be used, and animals getting out of their pens;
- Constant harassment about water usage;
- Accusing the tenants' children of being mentally abusive, and yelling at the tenants' children for playing in the driveway;
- Unnecessarily calling police to attend for an inspection; and
- Both tenants feel uncomfortable in their home as a result of the continuous notes and confrontations by the landlords.

The tenants claim the equivalent of half a month's rent, or \$675.00 for November 15 to December 15 and an additional half month's rent, or \$675.00 for December 15 to January 15, as well as \$200.00 for past issues of lost enjoyment for 2.5 years. The tenants' total claim is \$1,650.00.

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. The *Act* states that in order to be effective, the notice must be dated and signed by a landlord. In this case, the landlord testified that it was served on December 1, 2015 yet it is dated no specific day in January, 2016. The tenant testified it was posted to the door of the rental unit on January 10, 2016. Although the *Act* states that incorrect effective dates contained in a notice are changed to the nearest date that complies with the *Act*, the notice also contains an effective date of vacancy that does not comply with the *Act*. The notice must be effective the day before the date rent is payable under the tenancy agreement.

Generally, unless a tenant pays rent late a minimum of 3 times, the tenant cannot be considered to be repeatedly late. I discount the late payment in March, 2014 because it was more than a year before the next late payment. The next late payments are in April, July and December, 2015. The first 2 of those were partial payments paid to the landlord on the 1st day of the month and the balance the day after rent is due. In December, 2015 the landlord refused any portion of rent until the entire amount was received.

Considering the facts, I am not satisfied that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*, and I cancel it.

With respect to the tenants' monetary claim, in order to be successful, the onus is on the tenants to establish that the landlords have failed to comply with the *Act* or the

tenancy agreement. The landlords do not deny that repairs are required to the dishwasher, which is included in the tenancy agreement, and I find that the tenants' claim of \$100.00 for November through January is reasonable. The landlord agreed at the hearing to repair the appliance, and order the landlords repair or replace the appliance. I also find that the tenants have established an additional \$100.00 for February/March, 2016.

A landlord is required to provide the tenants with reasonable quiet enjoyment of the rental unit. The tenant testified that the parties have had issues and the tenants no longer feel comfortable, and that their anxiety has increased as a result of the landlords' behaviour, breaching that right to quiet enjoyment. I am satisfied that the break-down in the relationship between the parties commenced with the tenants' failure to reimburse the landlords voluntarily for the propane bill. Most of the points raised by the tenants are minor in nature, but I find that they are not disputed by the landlords and add up to an effort by the landlords to cause the tenants to move out. However, in determining any monetary compensation, I must consider whether or not the tenancy has been devalued as a result of the landlords' failure to comply with the *Act*. There is nothing in the *Act* requiring a landlord to use the tenants' front door, or to be polite, or to install a fresh air return to the furnace on advice of repairmen unless that has had an effect on the tenants, and there is no evidence of that. In the circumstances, I am not satisfied that the tenants have established a monetary claim as against the landlords for loss of quiet enjoyment.

Having found that the tenants have established a monetary claim of \$200.00, I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated January, 2016 is hereby cancelled and the tenancy continues.

I order the landlords to repair or replace the dishwasher.

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 \$200.00. I order the tenants to reduce rent for a future month by that amount or may otherwise recover it.

These orders are 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: March 24, 2016

Residential Tenancy Branch