Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, ERP, LAT, LRE, MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; for an order that the landlord make emergency repairs for health or safety reasons, for an order permitting the tenants to change the locks to the rental unit; for an order suspending or setting conditions on the landlord's right to enter the rental unit; 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 that the landlord make repairs to the unit, site or property; for an order reducing 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.

Both tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the testimony and evidence provided. The parties agree that evidence has been exchanged in accordance with the Rules of Procedure, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the tenants advised that they are moving out on June 30, 2016 which is the effective date of a notice to end the tenancy given by the landlord, and the tenants withdraw all applications with the exception of a claim for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the filing fee.

Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants 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 damages due to loss of quiet enjoyment of the rental unit, and other damages resulting therefrom?

Background and Evidence

The first tenant (BMP) testified that this fixed term tenancy began on December 5, 2016 and expires after 2 years, thereafter reverting to a month-to-month tenancy. Rent in the amount of $1,250.00 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 tenants in the amount of $625.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is the mid-unit of a tri-plex and the other units below and above are also tenanted.

The tenant also testified that the rental unit was advertised as sound proof. However, the neighbouring tenant in the downstairs suite complained to the landlord about noise from the tenants' rental unit. The landlord's policy is to issue a notice to end the tenancy after 3 complaint letters have been given to the tenants. The tenant had provided explanations related to health issues to the landlord on each of the occasions where letters were given by the landlord. The tenants have also provided a letter from a physician stating that the tenant has a condition that causes the tenant myofascial pain. The tenant testified that some of the complaints were during the day and were normal living noises.

The first written complaint from the landlord is dated January 19, 2016 which states that the landlord had noise complaints on January 8 for loud banging and a loud argument; January 10 for a loud stereo; and January 18 for a loud argument. The notice was responded to in an email by the tenants, a copy of which has been provided. The landlord did not respond to it or investigate the complaint and continued to give the tenants a second warning letter for an event that occurred on February 26, 2016, and the warning letter is dated March 3, 2016. In the interim, the landlord communicated with the neighbouring tenants in the downstairs suite, but no one approached the tenants. The tenant would have been willing to explain if the landlord had asked. In order to be in violation of noise complaints, it must be by someone invited onto the property by the tenants. The complaint is about a visit from the tenant's ex-spouse, who has also provided a statement for this hearing. The tenant testified that the ex-spouse was not permitted on the property by the tenant, and the landlord did not investigate the complaint, only speculated, interfered with the tenant's life, threatened the tenants with eviction in warning letters, and failed to communicate issues in the tenant's written responses. The tenant also asked for a meeting with the neighbouring tenants, but the landlord did not facilitate that.

The parties had participated in a dispute resolution hearing held on May 4, 2016 which was the subject of the tenants' application to cancel a notice to end tenancy for cause. The resulting decision cancelled the notice to end the tenancy, the tenants were awarded recovery of the filing fee, and the tenants' application for monetary compensation for damages was dismissed with leave to reapply. The same day as the hearing, the landlord served the tenants with another 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated May 4, 2016 and contains an effective date of vacancy of June 30, 2016. The reasons for issuing it are:

- Tenant or a person permitted on the property by the tenant has:
    - significantly interfered with or unreasonably disturbed another occupant or the landlord;
    - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The tenant also testified that the landlord has accessed the rental unit an unreasonable number of times and sometimes illegally. On February 4, 2016 the landlord asked to check the calking in the bathroom; on February 22 asked for access to see if moldings on the laundry door could be removed; on March 7 wanted access for weather-stripping installation. Further, on March 9, 2016 the landlord performed a condition inspection without proper notice. The tenant told the landlord that the visits by the landlord were excessive, and that repairs could have been made during the inspection visits. Another inspection took place on April 18, 2016. The furnace broke down on April 27 and the landlord was informed, then on April 29, the landlord attended to look at it himself and determined it wasn't an issue because it wasn't cold. The tenant reminded the landlord on May 3, 4 and 6 of required repairs to the furnace. The landlord attended again on May 9 without a contractor and didn't fix anything. The landlord returned again on May 10 with an electrician, and again on May 13 with a gas fitter. The landlord attended again on May 18 for more repairs, and entered when no one was home.

In the interim, wanting the repairs completed, the tenant contacted a company to see if the tenants could get the furnace repaired themselves, but the problem was identified as electrical and the landlord had stated that smoke detectors for the entire building were affected. The landlord attended and put a lock on the furnace closet to prevent tenants from having it fixed.

The tenant testified that there has been a continuous pattern of the landlord's behaviour and the tenant has asked the landlord to respect the tenant's privacy. The landlord has recently notified the tenants of intended access by putting a notice in the mailbox for 6 visits to show the rental unit to prospective tenants. The tenant asked for Saturday

mornings, but the landlord wants access at dinner time on a Sunday as well as 7:30 to 8:30 on Thursday evenings, assumingly until the rental unit is re-rented.

The tenant has made every effort to mitigate any issues, and on May 21, 2016 met with the neighbouring tenant in the lower level who agreed that the issues were resolved to her satisfaction. The tenant attempted to meet with the landlord on May 23, but the landlord would not respond and didn't show up. The neighbouring tenant also encouraged the landlord to resolve things, however when the landlord failed to attend for a meeting, the tenants decided to find another place to live. The landlord was disrespectful in a huge way, would not talk to the tenants, and wanted them to move out because he doesn't like the tenants, not for a valid cause. Rent in the new unit is significantly more, and moving expenses are also significant.

Further, as a result of the problems that the landlord either caused or failed to deal with appropriately, the tenant was unable to finish an accreditation in public relations in time. The tenant tried to complete a thesis and testing, but the landlord allowed another tenant to cause distress without the landlord investigating noise complaints properly from December.

The tenants seek monetary compensation for:

- recovery of the accreditation fee in the amount of $480.25;
- damages for loss of heat for 3 weeks in the amount of $312.50;
- $28.24 for the cost of registered mail;
- $10.00 for the medical bill;
- $2,000.00 for loss of quiet enjoyment of the rental unit;
- recovery of the $100.00 filing fee;
- $280.20 for loss of pay due to the tenants' need to participate in the hearing and attend at the rental unit for inspections related to the furnace;
- for a total claim of $3,211.19,

The tenant also testified that the amount of the claim for loss of pay is an estimated amount.

The second tenant (RA) testified that the tenants feel at risk because the rental unit is not safe. The furnace and hot water tank and smoke alarm are all behind a locked door. The tenants told the landlord about electrical issues and it took weeks to get the furnace working. Also, when the tenant complained to the landlord about a slippery deck and walk-way, the landlord's response was to put up a sign that says, "Slippery when wet." All tenants want something done, but the landlord refuses to spend any money.

The landlord has also caused the tenants unnecessary stress and aggravation by making very derogatory statements about the tenant's wife. The landlord used unreasonable judgment by giving the notice to end the tenancy and not dealing with complaints or attempting to resolve issues. The tenants get along well with others in the rental complex, and requested several times to meet with other tenants and the landlord, but the landlord is belligerent and refuses. The tenants resolved the issues themselves with neighbouring tenants, and the landlord continues to proceed with eviction despite that. The landlord has proceeded with the eviction process simply because he doesn't like the tenant's wife.

On April 18, 2016 the landlord attended the rental unit and spent the majority of his time looking inside cupboards, spent 5 minutes fiddling with a bolt under the kitchen sink and had no concern for the state of the apartment. The landlord simply wasted the tenant's time and invaded the tenants' space.

With respect to loss of heat, the tenant testified that during the day when the tenants were up and active, they didn't need the heat, but it was too cold at night, being only 12 to 13 degrees.

During the tenancy the tenants have only had family visit at the rental unit twice, and after the issues of noise complaints, family does not feel comfortable visiting the tenants for fear of eviction.

The landlord testified that the tenants moved in, a condition inspection report was done and the tenants said it was fine. Then later, one of the tenants phoned the landlord saying the place was a mess. The landlord responded that it had been cleaned, but the tenant screamed at the landlord. The landlord had put in a new ceiling in the bathroom, so drywall dust had to be vacuumed, but the tenant was very loud, and that was the landlord's first experience with the tenant.

The tenant also gets angry quite often. The statement of the neighbouring tenant provided for this hearing states what she heard, and there was fighting and screaming in the rental unit until 10:30 p.m. Another statement provided by a neighbour states that the tenant confronted the landlord.

The landlord agrees that the tenants resolved issues with the neighbouring tenants, but the final straw for the landlord was that the tenants were restricting access for the emergency repair for the furnace. The landlord refers to copies of emails dated May 17 and 18. There were 2 issues: one requiring and electrician and one requiring a gas fitter. It was not a straight-forward fix. The industry practice for electricians is to use relays on furnaces, but are not to be used with inductive motor, which is what the furnace is. That's why so many

relays were burned. The smoke detector company gave the landlord a solution which he relayed to the electrician. He also explained it to the tenants but they didn't believe the landlord.

The tenants removed the "Slippery when wet" signs and the landlord asked them to put them back up. They agreed if they could find them.

The landlord disagrees that the tenants have been disturbed in any way. When the landlord was allowed in the rental unit, all were short visits and were for the purpose of making emergency repairs that the tenants requested. However, it took about 4 hours to put in fire doors. The furnace closet was locked to prevent groups of people trying to fix it. The landlord has always treated the tenants with respect, however screamed at the tenant only once during the first phone call.

The landlord agrees that the rental unit was and is again advertised as sound-proof. However, the tenancy agreement states that the tenants upstairs will be mindful of tenants below.

Copies of numerous text messages and emails exchanged between the parties and from neighbouring tenants have also been provided.

Analysis

In this case, the tenants seek monetary compensation:

- $312.50 for 3 weeks for loss of heat;
- $2,000.00 for loss of quiet enjoyment of the rental unit;
- $480.25 for recovery of the accreditation fee;
- $10.00 for the medical bill;
- $280.20 for loss of pay due to the tenants' need to participate in the hearing and attend at the rental unit for inspections related to the furnace;
- $28.24 for the cost of registered mail; and
- recovery of the $100.00 filing fee;

for a total claim of $3,211.19. The tenant also testified that the amount of the claim for loss of pay is an estimated amount.

In order to be successful in a claim for damages, the onus is on the tenants to establish the 4 part test:

1. That the damage or loss exists;

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

With respect to loss of heat, the tenant testified that it was cold at night, but heat was not required during the day. The landlord did not dispute that the furnace didn't work and I am satisfied that the tenancy was devalued by a portion of the amount of rent paid. Considering that rent is $1,250.00 per month, or $41.66 per day; and divided by 24 hours in a day is $1.74; multiplied by 8 hours of sleeping time is $13.89; multiplied by a 3 week period = **$291.67,** and I grant a monetary order in that amount.

The tenants seek monetary compensation for aggravated damages for loss of quiet enjoyment of the rental unit for the following reasons:

- The landlord's failure to respond appropriately to issues between the tenants in the complex, causing the tenants to have to deal with them;
- The landlord's failure to withdraw the notice to end the tenancy even though the tenants had resolved the issues between them;
- The landlord's lack of cause and invalid reason to issue the notice to end the tenancy, being that the landlord simply doesn't like one of the tenants;
- The landlord's derogatory remarks about one of the tenants; and
- The landlord's continuous unreasonable entry into the rental unit.

Firstly, I have no authority to grant monetary compensation to any party to penalize or punish someone for a wrong-doing.

A landlord is required to provide exclusive occupancy of a rental unit free from unreasonable disturbances. I have reviewed the emails and text messages exchanged between the parties, and the emails sent to the landlord by the neighbouring tenant. Considering the number of complaints by the neighbouring tenant, I am not satisfied that the tenants have established that the landlord had no valid reason to issue the notice to end the tenancy. Although it's clear that the landlord's impression of the tenants was may not have been favourable, the landlord also had an obligation to provide neighbouring tenants with their right to quiet enjoyment as well. I also consider the rude emails that the tenant sent to the landlord. I disagree that the tenants did what they could to mitigate any damage or loss suffered or that the landlord's actions were contrary to the Act. The tenants have failed to satisfy elements 2 and 4 in the test for damages.

A landlord is also required to provide not less than 24 hours written notice to enter a rental unit unless the tenants otherwise agree at the time of entry. The reasons for entry must also be reasonable, and a landlord may inspect a rental unit once per month. In this case, the tenants agreed on a number of occasions at the time of entry, but eventually found that the frequency and reasonableness to be disturbing and told the landlord that. The landlord continued to enter the rental unit and recently gave the tenants written notice to enter on 6 future occasions to show the rental unit to prospective tenants without considering the times suggested by the tenants. I find that the landlord was in the rental unit at the very least twice per month for the months of February, March and April, and more in May, 2016 to show to prospective tenants. I also find that some of the visits were for necessary repairs, but the landlord could have inspected while there rather than interrupt the tenants' daily activities. In the circumstances, I find that the landlord has devalued the tenancy and the tenants have established a claim for loss of quiet enjoyment for a minimum of 5 days and I grant monetary compensation in the amount of **$500.00.**

Wit respect to the accreditation fee, I am not satisfied that the tenants' claim has been established. I have no idea how long it ought to have taken to finish, or what other factors may have played a roll.

The *Residential Tenancy Act* permits claims for recovery of a filing fee, but not for claims relating to preparing for a hearing or serving documents. The tenants claim $10.00 for the medical bill, which I find was a cost to prove a medical condition and was for the purpose of preparing for this hearing. I also find that the claim of $28.24 is for the cost of serving documents, and both of those claims are dismissed.

I am not satisfied that the tenants' estimate of $280.20 for loss of pay has been established. The tenants have provided no evidentiary material to justify that amount or the amount of work time lost, and time for attending a hearing is not provided for in the *Residential Tenancy Act.*

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

The tenants have withdrawn all other claims made in the Tenant's Application for Dispute Resolution, and therefore they are hereby dismissed. *The Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the1 Month Notice to End Tenancy for Cause dated May 4, 2016, and I find that it is in the approved form and

contains information required by the *Act.* I therefore grant an Order of Possession in favour of the landlord effective June 30, 2016 as stated in the notice.

Conclusion

For the reasons set out above, the tenants' applications for an order cancelling a notice to end the tenancy for cause; for an order that the landlord make emergency repairs for health or safety reasons, for an order permitting the tenants to change the locks to the rental unit; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order that the landlord comply with the *Act,* regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; and for an order reducing rent for repairs, services or facilities agreed upon but not provided are all dismissed as withdrawn.

I hereby grant an Order of Possession in favour of the landlord effective June 30, 2016 at 1:00 p.m. and the tenancy will end at that time.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $891.67.

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: June 24, 2016

Residential Tenancy Branch