



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CN, LRE, MNDC, MNSD OLC, FF

Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated July 21, 2016. The Notice claims that the tenant has significantly interfered with or unreasonably disturbed the landlord and has seriously jeopardized her health, safety or lawful right. Further, the Notice claims that the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of the landlord or has jeopardized her lawful right or interest.

In the portion of the government form Notice provided for details, the landlord has stated “I am constantly beset by this person. Yesterday he crossed the line by assaulting me. I fear for my safety.”

Proof of any of these claims justifies eviction under s. 47 of the *Residential Tenancy Act* (the “Act”).

The tenant also seeks compliance orders regarding landlord entry, the provision of water and the use of the driveway. He seeks monetary compensation for claimed loss of internet, water unavailability, loss of peace and quiet and loss of freedom.

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

Has the landlord demonstrated cause for the eviction under any of the claims set out in the Notice? Has the tenancy agreement been breached in regard to landlord access, lack of provision of required services or interference with the tenant's lawful rights and if so, what if any compensation would be appropriate?

Background and Evidence

The rental unit is a one bedroom basement suite in the lower portion of the landlord's home. This tenant is the only tenant in the home.

The tenancy started in May 2015. The monthly rent is \$800.00, due on the first of each month, in advance. The landlord holds a \$400.00 security deposit.

The landlord testifies that on July 21, 2016 she found a letter from the tenant taped to her door. The tenant felt that the landlord had entered his suite, disturbed some of his belongings and left the door open. He'd posted a notice to the landlord not to enter his suite.

Later in the day she notices papers attached to the tenant's door, addressed to her, warning her not to enter without lawful notice. She says she attempted to retrieve the papers from the door and the tenant, who was at the door, pushed her against the door jamb and put all his weight against her. She testifies that he was hurting her and she feared for her life. She says that she suffered bruising as a result of the assault.

The landlord says that the tenant then rolled his body onto the floor, claimed he had been assaulted by her and pulled out his cell phone to call the police.

She went to the police station but, she says, it was closed.

It appears the police conducted an investigation but not charges were laid.

The tenant tells a different story. He says the landlord pushed her way into his rental unit, grabbing at the papers on the door and that she was the aggressor. He took a phone video of the incident, which he produced at the hearing.

The parties were not friendly before this incident, as the result of a series of disagreements.

The landlord says, and I accept, that she was having significant water issues in and around her property. The water line to the house from the street had ruptured twice, causing her to have the leaks located, excavated and repaired. On a third occasion, the municipal line ruptured but lead her to be concerned that it was her water line that was leaking.

As a result, it became necessary for her, or her workman, to shut the water off to the home. Unfortunately, one of the water shut off valves is in the tenant's rental unit and access to it was required.

The landlord says she had the tenant's permission to enter over a three day work period in order to get to the valve. The tenant says she gave him nothing in writing.

On July 21 the tenant came home to find his door open and certain of his belongings near the valve moved or disturbed. It appears the landlord's workman had gone and neglected to replace the items and close the door. I am satisfied that the landlord was unaware of it when the tenant came home. It was this incident that sparked the written notices, leading to the alleged assault at the tenant's door.

The tenant has additional complaints. He says the landlord provided him with her internet wifi password after he moved in but he has had the service cut off sometimes and other times he has to re-enter the wifi password with each usage.

He says he has been without water for days on occasion. He produces a video taken at a time the tap in his suite produced no water. The video shows the empty tap and that a hose had been run from the neighbours' yard in through a window to the landlord's portion of the home.

He says that the landlord blocks his use of the driveway by failing to park her car in the garage, that she bakes in the kitchen above his bedroom in the middle of the night and that she is permitting her dog to bark during the night.

The landlord denies blocking the driveway or causing or permitting her dog to bark at night.

Analysis

Regarding the Notice to End Tenancy, I have carefully reviewed the video clip of the portion of the incident taken by the tenant. Contrary to the landlord's suggestion that the video had been tampered with, I find no basis to suggest such a fraud.

It is clear that it is the landlord who is entering the doorway attempting to grab the papers from the tenant as he backs into his rental unit. Had the assault as described by the landlord occurred prior to this point of the event, the landlord would not have been acting the way she did.

The video ends shortly, after some obvious overacting by the tenant, with him sitting on the floor, claiming to have been pushed and threatening to call the police.

I find that the tenant did not assault the landlord on July 21, 2016 nor threaten her in any manner that would justify the eviction Notice in question.

As a result, I cancel the Notice.

Dealing with the tenant's other claims,

The Wifi

The parties do not have a written tenancy agreement. I would point out that under the *Act*, a landlord is required to prepare a written tenancy agreement.

There is no evidence that the provision of internet access to the tenant was a term of the verbal tenancy agreement. It appears that about two months after the tenant moved in, the landlord gave him her wifi password. I find that she do not do so pursuant to any obligation under the tenancy agreement, but rather, did so as a courtesy to the tenant.

She was and is not legally obliged to provide the tenant with that service. As a result, the tenant cannot maintain a claim for its loss or malfunction. I dismiss this portion of the claim.

Lack of Water

The tenant has been without running water in his rental unit. The occasions this has occurred or the duration of each instance have not been set out either in the documentation or in testimony. I cannot conclude there was significant water interruption to the tenant's rental unit but for the three day period around July 21.

It is not clear whether the water was off for the full three days or for periods during each day.

In any case, it is apparent that the landlord was attending to an emergency repair of a leak which could not have been reasonably foreseen or avoided. I find that she was acting reasonably in pursuing the repair. There is no evidence to support the tenant's contention that she had employed an incompetent or unqualified worker to conduct the repair.

The landlord says the hose to the neighbours' water supply had been plumbed into the water supply to her whole house and so the tenant should have been receiving water from it as well, but for the fact that her worker turned off the wrong valve somewhere.

I find this explanation a bit incredible. Nevertheless, in my view, the tenant, then without water, and having observed the hose running in through the landlord's window should reasonably have contacted the landlord about it. It then would have been determined whether the water was for his rental unit as well and the situation corrected.

Additionally, normally a tenant must bear the inconvenience associated with such repairs, just as a homeowner must. I find that to be the case here. In any event, the tenant has not related any discomfort or inconvenience he has suffered or incurred as a result of the lack of water.

I dismiss the tenant's claim regarding the loss of water.

Vehicle Blocking

The tenant's video evidence and testimony make it clear that he cannot turn his vehicle around at the bottom of the driveway while the landlord's vehicle is parked outside her garage. That should be apparent to the landlord. Her proposal that he back his vehicle down what is apparent to be a long, sinuous driveway is not reasonable.

The fact that the landlord argues with the tenant about it, as seen on the video, makes it clear that what once might have been a pleasant landlord/tenant relationship has disintegrated significantly.

I do not consider that the tenant is entitled to compensation for the, so far, minor inconvenience this has caused, but I direct that the landlord keep the driveway free from obstruction and when arriving home in her vehicle to find the tenant's vehicle gone or facing down the driveway, to park her vehicle in the garage so that the tenant may have reasonable ingress and egress between the road and his parking spot. I'd suggest that when the tenant arrives home in his vehicle, he take the opportunity to turn it around at that time.

The Landlord's Dog

The tenant says the landlord leaves the dog outside at night to protect her fruit trees from vermin. Every the dog is alerted, it barks, disturbing the tenant. He says that on occasion the landlord stations the dog at a window in a room above his and, again, the dog barks when alerted by something outside, disturbing the tenant.

The landlord denies it.

Neither side offered any corroborative evidence to their testimony. I am unable to determine why one's testimony on this subject should be preferred over the other's. As the initial burden of proof of this item of the claim is on the tenant, I find he has failed to satisfy that burden. I make no compliance order nor grant compensation for this item of the claim.

Landlord Entry

I accept the landlord's testimony as being reasonable, that she was under the impression that the tenant had given permission for her workman to gain access to the valve in his rental unit over a three day period and so I make no order or award in that regard. As pointed out at

hearing, a landlord need not give a written notice to enter if she has the tenant's permission. As things stand, I would suggest that if the parties continue their landlord/tenant relationship, any permission be put down in writing.

Conclusion

In result, the tenant's application to cancel the Notice is allowed.

The remainder of the tenant's application, but for the direction regarding landlord parking, is dismissed.

As the tenant has been successful in challenging the Notice, he is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to reduce his next rent due by \$100.00 in full satisfaction of the 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: September 25, 2016

Residential Tenancy Branch