



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRE, CNR, CNC, LRE, MNDC, MNSD, OLC

Introduction

This hearing dealt with an application by the tenants for orders setting aside a 10 Day Notice to End Tenancy for Non-Payment of Rent and 1 Month Notice to End Tenancy for Cause; compelling the landlord to comply with the Act, regulation or tenancy agreement; limiting the landlord's right of entry; setting aside a rent increase; and granting a monetary order to the tenants including the return of the security deposit and pet damage deposit.

The hearing commenced September 27 and was completed on October 18. All evidence was exchanged in compliance with the Rules of Procedure and/or my directions.

The parties both appeared and gave affirmed testimony.

As set out in the Interim Decision dated September 27 the claims relating to the 10 Day Notice to End Tenancy for Non-Payment of Rent; improper rent; and the landlord's access to the rental unit were no longer an issue.

The tenant confirmed that the only monetary claim was for the return of the security deposit and pet damage deposit.

There was a delay in the start of the hearing on October 18. The landlord had lost the letter with the telephone number and access code for the hearing. She had asked the tenants for that information but they refused to provide it to her. At the start of the hearing the tenants explained the landlord's problem. I asked the tenants if they would call the landlord and give her that information. They refused. A few minutes later the landlord knocked on the tenants' door asking for the information. I asked the tenants to give the landlord the telephone number and the access code. This time they complied with my request. A few minutes later the landlord called into the hearing. I did not hear any evidence until the landlord had joined the call.

Issue(s) to be Decided

- Does the landlord have cause within the meaning of the *Residential Tenancy Act* to end this tenancy?
- Should a monetary order be made in favour of the tenants and, if so, in what amount?
- Should any other order be made against the landlord and, if so, on what terms?

Background and Evidence

This tenancy commenced November 1, 2015. Both parties testified that the rent for the unit currently occupied by the tenants is \$610.00, due on the first day of the month. The tenants have made payments totalling \$310.00 for the security deposit.

The tenants testified that they had a cat and a dog when they moved into the building. They were told they could pay the pet damage deposit later. The tenants' evidence is that no request for the pet damage deposit was made until they started complaining about bed bugs. At that point, the parties agreed to a deposit of \$200.00.

The landlord testified that a pet damage deposit was discussed at the start of the tenancy. Their usual practise is to enter into a payment scheduled for the pet damage deposit. They did not receive any payment until the tenants' were threatened with eviction for non-payment.

The tenants paid \$100.00 on May 25, 2016 and a further \$100.00 on July 28, 2016.

The landlord testified that there is a written tenancy agreement with addendums. She also testified that the tenants were given copies of the tenancy agreement and the rules; the tenants testified that they did not receive any documents. The only document filed in evidence was the standard anti-crime addendum. The tenants testified that the initials on the document were not theirs.

The rental unit is a suite located in an L-shaped motel that has been converted into rental units. All the units open onto an exterior deck/walkway. There are no interior hallways.

The landlord testified that the tenancy agreement is very clear that the tenants cannot drink outside their unit because the common walkway is a public area. At the end of April 2016, the male tenant and some others were drinking beer outside the tenants' unit. The landlord told them to take it inside. Her boyfriend took the tenant's beer away from him. The male tenant demanded that his beer be returned to him and yelled at the

manager and her boyfriend saying things like “don’t you know who I am”, “it only takes one call” , etc. The threats were accompanied by a lot of swearing. A video of the tenant yelling was submitted by the landlord.

The male tenant says the incident would not have escalated if the boyfriend had not taken his beer away. He says the video only shows him losing it; not the event led to that. One neighbour testified on behalf of the tenants. She agreed with the male tenant’s version of events. Another neighbour testified on behalf of the landlord. He said that the male tenant started the yelling.

The male tenant called the police, who did attend. The landlord says the police told the male tenant that they cannot drink in common areas. The male tenant says the police told him that since the walkway could be considered a common area the tenants are allowed to drink there as long as they are not disorderly. The tenants’ friend testified that she contacted the police after this event and was told the same thing. There was nothing from the police.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause the next day. The male tenant apologized to the landlord and promised to be more cooperative. The landlord decided not to proceed with the eviction.

In July a dispute erupted between the male tenant and another resident of the building. The neighbour’s wife posted some photographs of herself on social media. The male tenant posted a comment about the photographs and the neighbour took offense. He responded to the male tenant that if he said one more inappropriate thing about his partner there would be a problem: “I haven’t said anything, because you’re all right, but give it a break.” The male tenant responded with “ . . . bring it on you’ll fine out real quick not to again how’s the car not nice for long if you keep up your bs . . .”.

According to the statement filed by this neighbour he had a subsequent legal dispute with his partner which included a custody hearing and the tenant gave him a positive character reference for those proceedings. As a result he felt pressured by the tenants into providing them with a supportive written statement for this hearing. His subsequent written statement says that he does not want the tenants to remain in the building. The neighbour testified at the hearing. He said he did write the letters filed with the landlord’s evidence. He testified that he gave the threatening messages to the manager but did not report them to the police. The witness testified that in the weeks following the male tenant was conciliatory when other people were around but hostile when they were alone. He said he was not intimidated by the male tenant but he would prefer not to have the tenants as neighbours.

After seeing the messages the landlord issued and posted a 1 Month Notice to End Tenancy on July 30, 2016. The reasons stated on the notice were:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant and/or jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that that evening she was outside when the male tenant came home. He ripped the notice off the door and proceeded to yell and swear at her. He made threats like "I just have to make one call". Her testimony was supported by a statement from another resident of the building.

The male tenant testified that he did not call the manager names or threaten her. He said that the shock of receiving the notice caused him to suffer a second heart attack.. He went to the hospital for about nine hours. When he was released it was with a prescription for aspirin and nitro. No medical records confirming his diagnosis were filed.

With regard to bedbugs the tenants say they first complained in January but nothing was done until May. They did not apply to the Residential Tenancy Branch for a repair order or an order compelling the landlord to comply with the legislation or the tenancy agreement until this application.

The tenant testified that the landlord has tried steaming and spraying the unit, and that pest control has treated their unit twice but the problem persists. The landlord filed invoices from the pest control company showing that the unit was treated in April and May.

The landlord's evidence is that this side of the building has forced air heating and the bugs are travelling along the pipes. They are now trying heat treatments. Once the units are treated the pipes will be cleaned and bug-proof register covers will be installed. She also testified that several of the units around the tenants' have been heat treated.

Analysis

Does the landlord have cause within the meaning of the Residential Tenancy Act to end this tenancy?

On an application like this the onus is on the landlord to prove, on a balance of probabilities, one or more of the grounds stated on the notice to end tenancy.

In this case, the evidence amounts to two episodes of the male tenant interacting with the landlord or a neighbour in an inappropriate manner. Even if the tenant were entitled to drink beer on the walkway – a fact that was not established in this hearing – his response to the manager's boyfriend was out of proportion and inappropriate. After the tenant apologized the landlord was prepared to put this episode behind her.

The second incident is a good example of the saying "there is nothing social about social media". The evidence shows that this was just one part of a longer saga between these two individuals. It also shows that although the neighbour did not appreciate the male tenant's comments, he was not threatened or intimidated by them.

The evidence does not establish that either of these incidents was serious enough to become a criminal offence. Further, neither of them, either alone or together, is serious enough to justify ending this tenancy. That is not to say that the male tenant's behaviour is justified; only that it did not meet the standard set by the legislation.

Accordingly, the tenants' application is granted. The 1 Month Notice to End Tenancy for Cause dated July 30, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.

Should a monetary order be made in favour of the tenants and, if so, in what amount?

The tenants filed a copy of decision against the same landlord by one of their neighbours. In that decision the arbitrator ordered the landlord to return the pet damage deposit to the tenant.

Section 64(2) states that an arbitrator must make each decision or order on the merits of the case as disclosed by the evidence admitted and is not bound to follow other arbitrators' decision.

The facts of this case are different from the decision filed by the tenants. In the other case the evidence before the arbitrator was that the landlord did not ask for a pet

damage deposit at the time the tenancy was entered into or when the tenancy agreement was signed. In this case the evidence is that the parties did discuss a pet damage deposit at the start of the tenancy and the landlord agreed that it could be paid later. This was to the advantage of the tenants because the landlord could have refused to rent to them if they were not able to pay the pet damage deposit at the time they entered into the tenancy agreement. Further, when the landlord did pursue payment of a pet damage deposit she agreed to accept less than the amount permitted by the statute and to accept payment in installments. The tenants' application for return of the pet damage deposit is dismissed.

As the tenancy is continuing the tenants have no right to return of the security deposit; it will continue to be held by the landlord. Whenever the tenancy ends the provisions of the legislation will apply to the disposition of the security deposit.

Should any other order be made against the landlord and, if so, on what terms?

If there is a signed tenancy agreement between the parties it should have been filed in evidence by the landlord. The fact that it was not leads to the strong suspicion that one does not exist. **The landlord is ordered** to supply the tenants with a copy of the signed tenancy agreement, if one exists, within seven days of receiving this decision. If no written tenancy agreement exists or it has been lost, the landlord must sign a new tenancy agreement with the tenants and provide them a copy of that agreement within seven days of receiving this decision.

The tenants devoted most of their evidence to a long list of allegations against the landlord and/or her boyfriend. Some of these were contradicted by a witnesses' sworn testimony, e.g. that the landlord had forged the letters from the neighbour. Some were not backed up by the written evidence that tenants said they had but never filed, e.g. positive comments received by the tenants from the owner of the property. Some were not substantiated by any evidence at all, e.g. the landlord's boyfriend was hauled away in handcuffs or that the male tenant suffered two heart attacks rather than some other ailment such as angina attacks. Some were not accurate legally, e.g. not realizing that if a tenant invites or allows a landlord into the rental unit 24 hours written notice is not required. In the end, there was nothing that would lead me to make any other order against the landlord.

Finally, there was evidence led about a bed bug problem in the building and in the rental unit. The tenants complained that the landlord did not act quickly enough in response to their complaints. However, they could have filed an application to the Residential Tenancy Branch at any time asking for an order that the landlord be compelled to take

action on the bugs but did not until they were served with the notice to end tenancy, an unrelated issue. The evidence from all parties is that the unit has been treated by a pest control company and unfortunately the initial treatments were not successful. The evidence of the landlord is that the pest control company is now trying another method for the treatment of the bedbugs. As a pest control company is working on the problem no order will be made at this time. If the landlord discontinues the treatment program the tenants may apply for an order compelling the landlord to take further action.

Conclusion

- a. The 1 Month Notice to End Tenancy for Cause dated July 30, 2016 is set aside and is of no force or effect. The tenancy continues until ended in accordance with the legislation.
- b. The landlord is ordered to provide the tenants with a copy of the signed tenancy agreement or, if there is no agreement or the agreement has been lost, to sign a new agreement with the tenants.
- c. All other applications by the tenants are dismissed, some with leave to re-apply others without.

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: November 10, 2016

Residential Tenancy Branch