



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MND MNDC OPC DRI LAT MNDC O OLC PSF CNC LRE

Introduction

This hearing dealt with an application by the tenant for the following:

- An order cancelling the landlord's 1 Month Notice to End Tenancy dated August 23, 2016;
- Dispute rent increase that does not comply;
- An order authorizing change of locks to the rental unit;
- An order setting conditions on the landlord's right to enter the rental unit;
- An order that the landlord comply;
- An order that the landlord provide services or facilities required by the tenancy agreement;
- A monetary order for compensation for loss.

This hearing also dealt with an application by the landlord for the following:

- An order of possession based on the 1 Month Notice to End Tenancy dated August 23, 2016;
- A monetary order for damage to the rental unit;
- A monetary order for compensation for loss.

The landlord also requested recovery of the filing fee from the tenant for her application. Both parties attended the hearing and had an opportunity to be heard.

Initially, I was scheduled to hear only the tenant's application today but at the request of the landlord I brought her matter together with today's matter so that both could be heard at once. The landlord's application was originally scheduled to be heard by me (coincidence only) on November 28, 2016.

Issue(s) to be Decided

Are the parties entitled to the requested orders?

Background and Evidence

This tenancy began on May 28, 2016. The rent is \$1000 per month. The rental unit is the ground level suite in the landlord's home. On August 23, 2016 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The reasons indicated on the Notice were as follows:

- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- The tenant has engaged in illegal activity that has, or is likely to, jeopardize a lawful right or interest of another occupant or the landlord.

This tenancy began well with both parties being happy with each other but went seriously off side when the landlord discovered that the tenant was using large power tools in and around the rental unit. Some of the tools are large such as a drill press and a band saw. The landlord was also unhappy that the tenant was storing some of these pieces of equipment on the patio outside his unit. Photos of the equipment were submitted into evidence.

The landlord testified that she believed that the tenant was using the rental unit to run a business and that the power draw by the tools posed a fire threat to her home. The landlord testified that the power went out in the house on one occasion and that she believed this was due to the power tools. The landlord also testified that she asked the tenant to acquire "business insurance" and pay an increased amount for utilities in light of the fact that he was "running a business" out of the rental unit. The landlord testified that she is very concerned about fire and that she has repeatedly told the tenant that this is not a live/work unit.

For his part, the tenant testified that he was never running a business but that the tools were for hobby purposes only. The tenant also testified that he has only built/constructed one item since living in the rental unit and that that was a bed frame for his personal use. The tenant testified that all of his tools are rated for 110 volts and that his tool use was not the cause of the power outage mentioned above. The tenant also testified that he was very upset about the landlord entering his rental unit on August 18, 2016 at which time she had said she was going to be going through the unit with her insurance agent. According to the tenant, the insurance agent did not go through the unit with the landlord but rather went through the unit alone and took pictures of his things. The tenant testified that he knows this because he had installed video cameras in his unit. At the hearing the tenant stressed that he has been "totally stressed" by all of this and that he just wasn't to get back to focusing on school. The tenant testified that he really likes the rental unit and would just like to stay until he goes back East in July 2017.

Analysis

Tenant's Claim

Order Cancelling Notice to End Tenancy – The tenant has requested that the landlord's Notice to End Tenancy be set aside. The tenant argues that the landlord has not proven either of the allegations made in the Notice. For her part, the landlord believes that the tenant is putting her and her property at risk by using large power tools in the rental unit.

As a general principle, when a tenant disputes a Notice to End Tenancy for Cause, the burden is on the landlord to prove, on a balance of probabilities, that the allegations made in the Notice are true. It is not necessary for the landlord to prove all the allegations. Rather, the landlord must prove only one allegation in order to evict the tenant.

In the present case, I am not satisfied that the landlord has proven either allegation set forth in the Notice. Firstly, there is no evidence before me to indicate that the tenant is engaging in illegal activities and secondly, I am not satisfied that there is adequate evidence to support the landlord's claim that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. I understand that the landlord was alarmed to see so many power tools stored in and around the rental unit but based on the testimony of the tenant, I am unable to find that the tools are seriously jeopardizing the landlord's health or safety.

Accordingly, I hereby order that the landlord's Notice to End Tenancy dated August 23, 2016 be and is hereby cancelled.

In making this finding I am influenced in large part by the tenant's testimony that he is really only storing the equipment there and that he only made one item with the equipment, namely, a bed frame for himself. I do caution the tenant however, that clearly, a rental unit is not the appropriate place for furniture manufacturing and that if the tenant intends to do more of this work I suggest he do it somewhere else.

Dispute rent increase that does not comply – The tenant claims that the landlord has "repeatedly attempted to unilaterally change agreement demanding an increase utilities and rent". However, the landlord has not served the tenant with a Notice of Rent Increase or an Application for Additional Rent Increase and as a result, any attempts by the landlord to raise the rent or the tenant's portion of utilities is without effect. In other words, there is no need for an order. The tenancy will simply continue according to its original terms.

An order authorizing change of locks to the rental unit – The tenant has requested an order allowing him to change the locks to the rental unit. The tenant makes this request based on the landlord's entry into the unit on August 18, 2016 which the tenant believes was made on false pretences. The landlord has denied that her pretences were false but rather states that her insurance agent was unable to come that day. To my mind, the landlord should have then stayed out of the unit when the agent cancelled and given a new notice to the tenant that she simply wanted to inspect the rental unit on another date. She did not do this, entered the unit anyway and took photographs of the tenant's belongings.

Based on my review of the tenant's testimony and written submissions, it seems that this one entry in August is the only time this has happened. In other words, the tenant is not alleging that the landlord repeatedly enters his unit when he is not there.

If there had been more than the one occasion of entry under false pretences or any further entries without notice I might have been inclined to make an order allowing the locks to be changed. But in the present case, I find that the tenant has not established adequate grounds for a lock change at this time.

The landlord testified at the hearing that the tenant had already changed the lock but the evidence on this point is not clear. If the tenant has indeed changed the lock, he must return the original locks immediately or give the landlord keys to the new lock.

An order setting conditions on the landlord's right to enter the rental unit - The tenant has requested that conditions be set on the landlord's right to enter the rental unit. Again, this request is based on the tenant's concern over the landlord's entry into his unit on August 18th. The Act already requires that the landlord give at least 24 hours written notice of entry into the rental unit. Specifically, the Act states as follows:

Landlord's right to enter rental unit restricted

- 29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
 - (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
 - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
 - (d) the landlord has an order of the director authorizing the entry;
 - (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In my view, the safeguards set forth in Section 29 are adequate to protect the tenant from further improper entries into the rental unit. **I do, however, remind the landlord that she must abide by the rules set forth in Section 29** and that any further entries that do not strictly follow the provisions of Section 29 may result in a future order curtailing the landlord's access to the rental unit.

An order that the landlord comply – The tenant has requested an order that the landlord comply with the Act, regulation and/or tenancy agreement. The tenant's application does not specifically state which aspects of these legal texts he wishes the landlord to comply with but I assume that this request relates to the landlord's requests for higher utility payments, the landlord's entry into the rental unit and the landlord's failure thus far to provide the tenant with copy of the move-in condition inspection report. With respect to latter request, I understand that there was a move-in inspection conducted but that the tenant felt pressured while it was being done and that the landlord still hasn't given a copy of that report to the tenant.

I also understand that there has been an issue with the tenant's mail although the precise nature of the problem is not clear to me. There is only one reference to this problem in the tenant's evidence package and that is that the landlord was slow to deliver a package to the tenant. The package had arrived on August 5, 2016 but the tenant was not advised of its arrival until August 12, 2016.

I note that the tenancy agreement states that *"in the name of the Tenant that is the Landlord will check the mailbox twice a week and provide the Tenant with any mail sent delivered to the mailbox."*

So, in relation to all of the above matters I hereby order the landlord to comply with the Act, regulation and the tenancy agreement as follows:

- The landlord must abide with the terms of the tenancy agreement with respect to the rent and utility payments. If the landlord wishes to seek an additional rent increase the landlord must follow the rules in the Act and regulations regarding Additional Rent Increases.
- The landlord must comply with the provisions of the Act regarding entry into the rental unit.
- The landlord must comply with the provisions of the Act relating to condition inspection reports and immediately provide the tenant with a copy of the Move-in Condition Inspection Report.

- The landlord must comply with Section 11.5.4 of the tenancy agreement and check the mailbox twice weekly and promptly deliver any correspondence or packages to the tenant.

An order that the landlord provide services or facilities required by the tenancy agreement -

The tenant's application does not clearly set out the specific services or facilities that are being denied the tenant. However, I am hopeful that the orders I have made above with respect to landlord compliance will assist in this regard.

A monetary order for compensation for loss – The tenant has requested a monetary order in the amount of \$1880.40 comprised of the following items:

Security Equipment	\$ 497.45
Loss of Quiet Enjoyment	1000.00
Lock Change	300.00
Mail Redirection	82.95
TOTAL	\$ 1880.40

I shall deal with each of these claims in turn.

Security Equipment (\$497.45) – The tenant has requested that he be reimbursed by the landlord for the money he spent on security equipment to provide surveillance in the rental unit. The tenant makes this claim on the basis that he believes the landlord was entering his unit illegally and that he required the equipment to protect his privacy and his belongings. However, I am not satisfied that the tenant's decision to purchase security equipment is something for which the landlord should be held liable. What if the tenant had spent \$1000.00 on equipment? \$2000.00? The tenant owns the equipment and is free to take it with him when he leaves the rental unit. I dismiss this portion of the tenant's claim.

Loss of Quiet Enjoyment (\$1000.00) – The tenant has requested compensation for loss of quiet enjoyment of the rental unit. The tenant feels that he has been harassed by the landlord and her son and that his right to private enjoyment of the rental unit has been violated. In response to this, the landlord has stated that the tenant's use of the rental unit as a workshop has caused her alarm and was not what she had expected when she rented the unit to the tenant. I can see that the landlord has become very agitated about the woodworking equipment and that her son was aggressive in his tone and behaviour toward the tenant but I also see that the tenant has to bear some of the blame for the situation. If the tenant had told the landlord at the outset that he had all this equipment that he planned to use in the unit and in the common areas it is unlikely that the landlord would have rented to him. The tenant made an unwise choice when he decided to construct a bed frame on the landlord's patio. This kind of work is not a reasonable use of the common areas of the residential property. As a result, I find that the tenant is not entitled to compensation from the landlord for loss of quiet enjoyment.

I dismiss this portion of the tenant's claim.

Lock Change & Mail Redirection (\$300.00, \$82.95) – The tenant has requested compensation for a lock change he has not done and has not been authorized to do and for a mail redirection that he has not done. These are claims based on future actions the tenant may take. I dismiss these claims as premature.

Landlord's Claim

An order of possession based on the 1 Month Notice to End Tenancy dated August 23, 2016 - The landlord has requested an order of possession based on the Notice to End Tenancy dated August 23, 2016. I have already determined that his Notice should be set aside. Accordingly, the landlord's request for an order of possession based on the Notice is hereby dismissed.

A monetary order for damage to the rental unit – The landlord has requested a monetary order for damage to the rental unit. However, the precise nature of the damage is not clear from the evidence before me. Further, the landlord's application does not clearly set out the actual claim being made. The landlord's Monetary Order Worksheet does not set out what 'damage' has been done to the unit. Rather, the Form is poorly prepared and does not specify claims that I can reasonably weigh. I am of the view that the appropriate time for the landlord to make a claim for damage to the rental unit is at the end of this tenancy. I dismiss the landlord's claim for a monetary order for damage to the rental unit.

A monetary order for compensation for loss (\$6544.00) – The landlord has requested a monetary order for compensation for loss. The total amount of the claim is \$6544.00 comprised of the following (*I have copied the wording of the claims from the landlord's Monetary Order Worksheet*):

Putting my house and life in danger for 5 months (June, July, August, Sept, October) x \$1000.00	\$5000.00
\$100 extra utilities for every month	500.00
Alarm system to replace at least \$84 per hour	840.00
One or two day work \$84 first half hour	84.00
Traveling	120.00
TOTAL	\$6544.00

As a general principle, when a party makes a monetary claim, the burden is on that party to prove the claim. In other words, the party must provide sufficient evidence in support of the claim in order to be successful. It is not enough to simply say that something has upset you and then demand money.

In the present case, I understand that the landlord has felt very upset by the actions of the tenant. However, I am not satisfied that the landlord has provided sufficient evidence to justify the monetary claims made above.

For example, the landlord's claim for \$5000.00 due to the tenant "putting my house and life in danger for 5 months" is simply a statement of a feeling that the landlord has rather than a fact that is supported by evidence. It is true that the tenant is storing tools in the rental unit and on one occasion was making a bed frame but I am not satisfied that the landlord's house and life were or are in danger.

Similarly, the balance of the landlord's monetary claim is difficult to assess because it seems to be a statement of what the landlord believes is true rather than a claim that is supported by evidence. Part of the problem for me in assessing the landlord's claim is that, as stated earlier, the landlord's case is poorly presented and seems in part to be a reaction to the tenant's decision to dispute the landlord's Notice to End Tenancy and to bring a long list of other claims against the landlord. The tenant's application was filed in August and the landlord's application was filed in October.

Accordingly, I am not satisfied that the landlord has provided sufficient evidence to establish the monetary claim she has brought. I therefore dismiss the landlord's application for a monetary order.

Conclusion

I hereby order that the landlord's Notice to End Tenancy dated August 23, 2016 be and is hereby cancelled and that the landlord's request for an order of possession of the rental unit is dismissed.

I hereby order the landlord to comply with the Act, regulation and the tenancy agreement as follows:

- The landlord must abide with the terms of the tenancy agreement with respect to the rent and utility payments. If the landlord wishes to seek an additional rent increase the landlord must follow the rules in the Act and regulations regarding Additional Rent Increases.
- The landlord must comply with the provisions of the Act regarding entry into the rental unit.
- The landlord must comply with the provisions of the Act relating to condition inspection reports and immediately provide the tenant with a copy of the Move-in Condition Inspection Report.
- The landlord must comply with Section 11.5.4 of the tenancy agreement and check the mailbox twice weekly and promptly deliver any correspondence or packages to the tenant.

I dismiss the remainder of both applications.

I further dismiss the landlords' request to recover the filing fee from the tenant.

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: December 5, 2016

Residential Tenancy Branch