Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

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 landlord's use of property and for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other, and all evidence provided by the parties has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing the landlord agreed to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property, and I so order.

Issue(s) to be Decided

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 hydro consumption, stress, anxiety and loss of quiet enjoyment or a service or facility?

Background and Evidence

The first tenant (MJD) testified that this fixed term tenancy began on November 1, 2016 and expires on November 1, 2017 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of $1,100.00 per month was originally payable under the tenancy agreement, however the landlord reduced rent to $1,000.00 commencing February 1, 2017 due to the high cost of hydro. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $550.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a modular home on a 14 acre property, and the

tenants rent the house and a yard only. The landlord also resides on the property. A copy of the tenancy agreement has been provided.

The tenant further testified that the landlord tried to evict the tenants earlier than the end of the fixed term by serving a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided. It is dated February 15, 2017 and contains an effective date of vacancy of April 30, 2017. The reason for issuing it states: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The tenants told the landlord she could not end the tenancy, and the landlord replied, "You do what you have to do and I'll do what I have to do."

The tenants made the application for dispute resolution disputing the notice, and the landlord started to become vindictive, taking away satellite TV, then giving it back a week later. The landlord didn't provide the tenants with a copy of the tenancy agreement right away and when it was received, satellite TV wasn't included, but the parties had agreed to that and it was on the tenancy agreement signed by the tenants and was running when the tenants moved in. The service was removed from February 15 to 18, 2017 and then cut off completely on February 21, 2017 and has still not been provided again by the landlord.

Also, the parties shared a mailbox because it cost $189.00 per year for a postal box, and the landlord gave the tenants a key at the beginning of the tenancy. However, the landlord texted the tenant saying that the tenants had to pay for one, and weren't permitted to use the landlord's mailbox anymore. Now the tenants are having mail sent to another address but some is still going to the landlord's mailbox. The tenants are not sure what's there and whether or not they are getting all of their mail. The tenant's T-4 slips have not yet arrived.

The tenants were supposed to be paying hydro for the rental unit but discovered that they were paying hydro for the entire ranch. The water pump and water house are run with electricity and the landlord left the water running on low in winter to prevent freezing. The landlord also resides on the property, and the landlord had the tenants put hydro in their name at the beginning of the tenancy. The hydro bills go to the tenants, and for the period of October 31 to December 28, 2016 the bill was $810.48. A copy has been provided The tenants claim that amount from the landlord. Water is included in the rent on the tenancy agreement, but the tenants pay for it on the hydro bill. The tenants believe the landlord should pay 2/3 of the hydro for the landlord's home and the ranch, and the tenants should not be paying for the pump house at all.

The tenant further testified that the driveway is 1/8 of a kilometer long and was covered in sheer ice. The landlord clears the driveway, and had allowed the tenants to use the snow blower and wood splitter until the tenant's filed the application disputing the notice to end the tenancy. The tenants have been stuck in the driveway twice, and have suffered stress leaving and returning from work.

The landlord has entered the rental unit illegally, sending the tenant a text message after the fact saying she had entered because a storm was on the way and the landlord had let the tenants' 2 dogs out. The dogs were back inside the rental unit when the tenants returned home, and there was no reason for the landlord to enter the rental unit. The tenant's didn't intend to stay away for a long period and are fearful the landlord will enter the rental unit again illegally.

The tenants have provided a Monetary Order Worksheet setting out claims in the amount of $810.48 for hydro and $500.00 for undue stress and anxiety and P.T.S.D., for a total claim of $1,310.48.

The tenant's husband has P.T.S.D. and the tenant had to stop communications between him and the landlord. The tenant has also been throwing up from stress about being evicted and the unusually high hydro bills, but then the landlord got vindictive.

The second tenant (DRD) testified that the tenants disputed the 2 Month Notice to End Tenancy for Landlord's Use of Property and the high hydro bills, then the vindictive things have caused the tenants to be fearful for their safety. The tenant told the landlord that he slipped and fell, but the landlord still insists on not sanding the driveway, which the landlord had been doing until the tenants filed the application for dispute resolution. The tenant had to carry sand twice to retrieve his wife's car.

The tenant is also fearful the landlord will enter the rental unit illegally again. The tenant had worked for RCMP and has P.T.S.D., and now anxiety attacks and can't sleep.

The tenant also testified that the rental unit is 26 kilometers from town, and feels that hydro should be included in the rent because it's part of the infrastructure of the property.

Referring to copies of text messages provided as evidence for this hearing, the tenant submitted that swearing is not illegal, however after falling on the ice and hurting himself, the tenant blew his top.

The landlord testified that the landlord texted the tenants to let them know of the approaching storm and that the landlord had let the dogs out in case the tenants didn't

come home. There is no reason to fear that the landlord will enter the rental unit illegally.

The landlord also testified that the rental unit is a 9 year old house, not a manufactured home, and the landlord's cottage is about 400 square feet. The landlord isn't home much, but house-sits and ranch-sits for others. The tenants knew of the size of the driveway at the beginning of the tenancy, and the landlord has hired someone to clear the driveway. Both tenants have 4-wheel drive vehicles but it's been the worst winter. The landlord was told not to put down sand because it would wash away. The landlord pays the company to clear the snow, but because it's not an essential service, the company has to clear highways first, then private properties, so are not always available. The tenancy agreement does not include snow removal. However, the landlord loaned the snow-blower to neighbours and the tenants can get it any time.

The tenants still have a key and access to the landlord's mailbox and the tenant is simply lying when she says that the landlord texted saying they could no longer use it.

With respect to the satellite TV, the parties had a verbal agreement only, and the landlord was fine with that. The tenants wanted a receiver in the living room and in the bedroom, but the landlord only had one in the house. The landlord disconnected it because the tenants wanted the landlord to pay for hydro. The landlord agreed to pay for satellite and the tenants would pay hydro. Copies of satellite costs from the provider have been provided.

The landlord further testified that the tenants are in arrears of rent, having only paid $1,000.00 for each of the months of February and March rather than $1,100.00, and there was no written agreement to reduce rent by $100.00 per month

The landlord did not list or advertise the rental home for sale, but was approached by a buyer so the landlord gave the 2 Month Notice to End Tenancy for Landlord's Use of Property. Then the landlord advised the tenants that the landlord had been unaware that the tenancy could not be ended by the landlord for the landlord's use of property because of the fixed term.

The landlord submits that all people should be able to live in peace and quiet, and the landlord is stressed out as well due to the text messages from the tenants.

Analysis

The parties agree that the 2 Month Notice to End Tenancy for Landlord's Use of Property is cancelled.

The tenants also claim $810.48 for recovery of a hydro bill and have provided a copy. Whether or not it is contained in a tenancy agreement, a term can be ruled unconscionable if it is grossly unfair to another party. In this case, the landlord testified that she's not home much, but did not dispute the tenants' testimony that the water pump and pump house rely on hydro as well as the landlord's residence. The first tenant also testified that the tenancy agreement they signed was not given to them right away, and when the tenants received a copy it was missing satellite TV as a service provided. The landlord testified that the parties had agreed that the landlord would pay for satellite and the tenants would pay the hydro, and also testified that the landlord disconnected the satellite because the tenants wanted the landlord to pay for hydro.

Regardless of what was agreed to verbally or otherwise, I find the term of the agreement to be unconscionable that the tenants pay for hydro for the landlord's residence and the entire 14 acre property, especially considering water is included in the rent which is provided by hydro, and that water for the entire property is provided by electricity, as well as the tenant's undisputed testimony that the landlord kept water running over the winter to prevent pipes from freezing. I have also reviewed the other evidentiary material, and I find that the tenants ought not to be paying hydro for the landlord's ranch. The tenant testified that they rent the house and a yard only, and the landlord didn't dispute that.

The tenant also testified that the landlord reduced rent by $100.00 per month commencing February 1, 2017 as a contribution toward hydro and the tenants have provided a copy of an unsigned note, somewhat to that effect. The landlord's evidentiary material disputes that such an agreement was ever made in writing, and testified that the tenants are in arrears of rent $100.00 for each of the months of February and March, 2017.

Having found that the term of hydro being paid by the tenants for the entire ranch is unconscionable, and considering that the rental unit is bigger than the landlord's cottage, I find that the landlord ought to pay 2/3 of the hydro bills. The tenants have paid the $810.48 hydro bill for October 31 to December 28, 2016 and I find that the tenants have established a claim of 2/3, or $540.32. I further order the landlord to reimburse the tenants the equivalent of 2/3 of all hydro bills.

I also find that rent is $1,100.00 per month.

With respect to satellite, I find that if it did exist as a service provided in the tenancy agreement that was signed by the tenants, it was a service provided by the landlord. Due to the fact that the tenancy began on November 1, 2016 and the landlord did not dispute the tenant's testimony that it was running when the tenants moved in, and that

the landlord had it disconnected in February, 2017, put it back on and took it away again, it's reasonable to assume that it was a service provided by the landlord. The landlord also testified that it was taken away when the tenants said they didn't want to pay the hydro bill. The *Act* states that a landlord must not take away a service or facility without giving the tenants at least 30 days notice in writing and must reduce rent accordingly. The *Act* also states that a landlord may not take away a service or facility if it is a material term of the tenancy agreement. I make no findings that it is or is not a material term, but I order the landlord to reinstate satellite immediately, and I find that it is included in the rent as provided at the beginning of the tenancy.

With respect to the balance of the tenants' monetary claim, in order to be successful, the onus is on the tenants to satisfy 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 *Residential Tenancy 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.

The tenants claim $500.00 for stress and anxiety for the landlord's "vindictive" behaviour since the tenants disputed the 2 Month Notice to End Tenancy for Landlord's Use of Property. I have also read the text messages provided and I agree that swearing is not illegal, however I also find that the tenants were rude and difficult and did little to mitigate any damage or loss suffered. A landlord is required to respect and provide the tenant's right to quiet enjoyment but any award must not be imposed to punish the landlord. The purpose of aggravated damages is to compensate the tenants for the loss of benefits that were reasonably contemplated by the parties when the contract was made, and will only be awarded where there is an independent wrong in addition to the breach of the contract, specifically considering that the subject of the contract is to provide freedom from unreasonable distress or disturbance. "Nominal Damages" is a technical phrase, affirming that there is an infraction of a legal right where no real damage has been suffered. In this case, I am satisfied that the landlord has breached the tenants' right to quiet enjoyment, but I am not satisfied that the tenant's P.T.S.D. and related stress is a result of the landlord's failure to comply with the *Act* or the tenancy agreement. There is no medical evidence before me, and I find that the tenants have established a monetary claim for loss of quiet enjoyment of $100.00.

With respect to the loss of the service of the satellite TV, I also find that the tenants are entitled to reimbursement of ½ of the average of the satellite bills provided for a period

of 38 days, calculated as follows: $103.43 + $102.95 + $109.94 = $316.32 / 3 = $105.44 / 92 = $1.15 x 38 = $43.55.

There is no dispute that the landlord has entered the rental unit without the consent of the tenants, but I am not satisfied that the tenants have suffered any damage or loss as a result. Therefore, I order the landlord to comply with Section 29 of the *Act,* 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 summary, I find that the tenants have established a claim of $540.32 for hydro, $100.00 for aggravated damages and $43.55 for loss of satellite, for a total of $683.87. I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it. I further order that the landlord reimburse the tenants 2/3 of all hydro bills. I further order that rent is $1,100.00 per month.

Conclusion

For the reasons set out above, and by consent, the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated February 15, 2017 is hereby cancelled and the tenancy continues.

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 $683.87 and I order that the tenants be permitted to reduce rent until that sum is realized or may otherwise recover it.

I further order that the written tenancy agreement is for rent in the amount of $1,100.00 per month payable on the 3rd day of each month, which includes satellite TV, and the landlord is responsible for 2/3 of the hydro bills.

I further order the landlord to comply with Section 29 of the *Residential Tenancy Act* as set out above.

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: April 05, 2017

Residential Tenancy Branch