



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, ERP, MNDC, OLC, PSF, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord make repairs to the unit, site or property;
- an order that the landlord make emergency repairs for health or safety reasons;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlord comply with the *Act*, regulation or tenancy agreement;
- an order that the landlord provide services or facilities required by the tenancy agreement or law; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the hearing and the landlords were accompanied by another person to translate. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other and give submissions. The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

During the course of the hearing, the tenants withdrew the application for an order that the landlord make repairs to the unit, site or property.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Have the tenants established that the landlord should be ordered to make emergency repairs for health or safety reasons, and more specifically a second entrance/exit to the rental unit?

- Have the tenants established that the landlord should be ordered to provide services and facilities required by the tenancy agreement or law, and more specifically a dishwasher?
- 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 the costs incurred to install a dishwasher?
- Have the tenants established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to give notice to the tenants before construction starts on the rental property?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 1, 2015 and expired on February 29, 2016, thereafter reverting to a month-to-month tenancy. The landlord purchased the rental home about 2 years ago and extended the tenancy for another year, and the tenants still reside in the rental unit on a month-to-month basis. Rent in the amount of \$950.00 per month is payable on the 1st day of each month and there are no rental arrears. The landlord has collected a security deposit from the previous owner in the amount of \$475.00 which is still held in trust by the landlord, and no pet damage deposit has been collected from the tenants. The rental unit is a basement suite and the landlord resides in the upper unit of the home. A copy of the tenancy agreement has been provided by the tenants as evidence for this hearing.

The landlord further testified that on August 31, 2017 his son personally served one of the tenants with a One Month Notice to End Tenancy for Cause, a copy of which has been provided by the tenants for this hearing. It is dated August 31, 2017 and contains an effective date of vacancy of September 30, 2017. The reasons for issuing it state:

- 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 landlord's son served it because of the landlord's health, and told the tenants not to contact the landlord. The landlord has not had any contact with the tenants since August.

If the tenants' application to cancel the notice ending the tenancy is dismissed, the landlord would be content with a vacancy date of about a month.

The tenant testified that the parties had a good relationship until an incident occurred wherein the tenant's spouse saw a stranger on the next door neighbour's deck. Police were called who asked what the tenant's spouse had seen. After the police left, the landlord told the tenant he didn't want police there and to find another place to live. The following day the landlord yelled at the tenant that he needed to show more respect, and also accused the tenants' daughter of stealing a shoe horn, which is denied by the tenant and his daughter. The tenant denies using bad manners or talking/behaving aggressively to the landlord.

With respect to emergency repairs, the tenant testified that there is only one useable entrance to the rental unit. It is an above-ground suite, and another opening exists but is locked. The tenants seek an order that the landlord provide that door for emergency egress.

The tenants have provided a Monetary Order Worksheet setting out the following claims:

- \$150.00 for a dishwasher;
- \$350.00 for professional installation;
- - \$100.00 for not using a professional installer.

The tenant purchased the dishwasher on Craigslist and paid cash, and no receipt has been provided. The tenants' total claim is \$400.00 in addition to recovery of the \$100.00 filing fee. The tenants' application for an order that the landlord provide services or facilities is about the dishwasher.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenants have provided photographs of a lot of broken up large and small concrete chunks around the rental building. One of the photographs depicts the only entrance to the rental unit which is torn up, and the tenants seek an order that the landlord give the tenants notice of work that is completed on the property that affects the rental unit.

In Rebuttal, the landlord testified that it's a new sidewalk. It's an inconvenience but that's life.

The tenants installed the dishwasher by removing cupboards without the landlord's consent to make any structural changes. The landlord was totally unaware of a dishwasher being included on the tenancy agreement.

With respect to the exit door, the landlord testified that at one time it was a single family dwelling, and when converted, the door the tenant referred to in his testimony is not locked but has no door knob and no hinges. The landlord had asked contractors to hang it and put hinges on it, however the tenant was upset that contractors were there without notice while fixing outside frames on windows. The tenant verbally abused the contractors and they won't do it while the tenant is there. The landlord never thought about giving notice for work that would be done on the outside of the house.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The *Act* specifies how a tenancy ends, and the reasons quoted on the form of the notice coincide with the reasons specified in the *Act*. The parties have a contract, and in order to end the tenancy

for the reasons set out in the form, there must be a significant interference. I accept that the landlord has high blood pressure, but I also accept that the landlord has threatened eviction or told the tenants to find another place to live because police questioned one of the tenants about an incident that was not even on the rental property. I am not satisfied that the incidents described by the landlord are significant enough to warrant ending the tenancy under that section of the *Act*. Therefore, I cancel the One Month Notice to End Tenancy for Cause and the tenancy continues.

In order to be successful with a monetary claim for damage or loss, the tenants must 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 *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 have provided no evidence of the costs claimed for the purchase or installation of the dishwasher. Further, there is no evidence before me that the tenants ever asked the landlord for a dishwasher. Contrary to that, the landlord testified he didn't even realize it was included in the tenancy agreement. Therefore, I find that the tenants have failed to satisfy elements 3 and 4 in the test for damages and the tenants' monetary claim is dismissed.

With respect to the emergency repair, the *Act* describes emergency repairs as:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

I have reviewed the photographs and other evidentiary material, and I am not satisfied that the extra door is required for emergency egress. There appears to be a sliding glass door next to the entrance door, and egress may also be possible through large windows if the rental unit is an

above ground unit. I am not satisfied that the tenants have established that the door is an emergency repair, and I dismiss that portion of the application.

With respect to the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the legislation sets out that a landlord must not enter a "rental unit" unless certain circumstances apply, one of which is giving no less than 24 hours written notice to the tenants. It also states that a landlord must not unreasonably restrict access to "residential property" by the tenant of a rental unit that is part of the residential property. The *Act* also defines a "rental unit" and "residential property" as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

In this case, I do not see that access has been totally restricted, but it would be a courtesy of the landlord to notify the tenants in advance. Further, where windows or doors that enter the rental unit are being repaired or replaced, that constitutes a portion of the rental unit, and the landlord must give no less than 24 hours written notice for contractors to do the work. I order the landlord to comply.

Since the tenants have already installed the dishwasher, I dismiss the application for an order that the landlord provide services or facilities required by the tenancy agreement or law.

Since the tenants have been partially successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in that amount and order that the tenants may reduce rent for a following month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the One Month Notice to End Tenancy for Cause dated August 31, 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 \$100.00 as recovery of the filing fee and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

I hereby order the landlord to comply with the *Residential Tenancy Act* by giving the tenants no less than 24 hours written notice prior to contractors or the landlord or the landlord's relatives or agents entering the rental unit or repairing the rental unit in a manner that requires access to the windows or doors of the rental unit.

I further order the landlord to comply with the *Residential Tenancy Act* by avoiding restriction of access to the tenants or the tenants' guests to the residential property.

The balance of the tenants' application is hereby dismissed.

This order is 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: November 23, 2017

Residential Tenancy Branch