Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT MNDCT RP

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 cause; a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and an agent for the landlord attended the hearing and each gave affirmed testimony. The landlord named in the application also attended but did not testify. The parties were given the opportunity to question each other and give submissions.

At the commencement of the hearing the landlord's agent advised that a previous hearing was held on December 11, 2017 between the parties, and the tenants have provided a copy of the resulting Decision for this hearing, which amends the Style of Cause in that matter, changing the name of the landlord. It states:

> "The Tenants named the property managers as Landlord in their application. The Landlord named in the residential tenancy agreement was a corporate Landlord. Pursuant to section 64(3)(c) I amend the Tenants' application to correctly name the Landlord."

The tenants did not dispute the amendment, and I amend the landlord's name. The frontal page of this Decision reflects that amendment.

During the course of the hearing, the parties agreed that the tenancy will end on June 30, 2018 and the landlord will have an Order of Possession effective at 1:00 p.m. on that date. The parties confirmed at the end of the hearing that this agreement was made on a voluntary basis and that the parties understood the nature of this full and final settlement of this matter. Since the tenancy is ending, this Decision does not include all of the testimony or evidence of the parties with respect to a notice to end the tenancy given by the landlord.

The tenants also withdrew the application for an order that the landlord make repairs to the unit, site or property.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- 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 harassment and lack of peace?

Background and Evidence

This fixed term tenancy began on December 1, 2016 and expired on November 30, 2017 thereafter reverting to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of $1,175.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of $587.50, which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is an apartment in a complex containing 42 units.

The first tenant (JT) testified that the resident manager of the complex resides in the rental complex and has been harassing the tenant ever since the tenants started to complain about required repairs. The bathtub has a rust stain in the middle of it, and photographs have been provided. The bathtub is worn out and is getting worse.

The tenants had also complained of a leak in the ceiling which the tenants have had to endure for a year which has caused the counters in the kitchen to bubble. The landlord replaced the countertops, but the new one continues to bubble.

A Timeline of Events has been provided as evidence for this hearing indicating that the landlord continues to harass the tenants in front of others and alleging that the landlord regularly locks the laundry room door deliberately to inconvenience the tenants. It also states that in September, 2017 a big hole was left in the ceiling by the landlord for 6 weeks; the oven was broken for 3 weeks, silverfish in the bathroom never addressed; rotten cupboards, entering the rental unit without notice, and water disruption for 3 days without notice to the tenants.

The tenant further testified that the parties had been to Arbitration in 2017 and the resulting Decision ordered the landlord to repair the bathtub. A copy has been provided as evidence for this hearing, and shows that the hearing was held on December 11, 2017 and the resulting Decision is dated December 12, 2017. The Decision deals with a One Month Notice to End Tenancy for Cause, wherein 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.

It also states that the landlord's agent testified that the reasons for issuing it were due to the tenants verbally harassing the onsite manager as well as smoking marijuana in a non-smoking building, and that the rental building is advertised as non-smoking even though not mentioned in the tenancy agreement.

Also provided is a One Month Notice to End Tenancy for Cause dated March 25, 2018 with an effective date of vacancy of April 30, 2018. 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;
- 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;
    - jeopardize a lawful right or interest of another occupant or the landlord.

Copies of strings of emails exchanged between the tenants and the landlord's agents have also been provided as evidence for this hearing.

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

- $1,000.00 for harassment; and
- $2,600.00 for lack of peace.

The second tenant (LT) testified that the ceiling leaked for a year, and the landlord had someone paint over the water stains rather than repair it. The tenant showed the leak to the resident manager, and video recorded the resident manager looking at water pouring out of the ceiling.

The tenant also testified that he has always been very courteous to the resident manager, and has never disallowed her to enter the rental unit, and she has been in the rental unit multiple times during the tenancy. The resident manager harasses the tenant's wife (JT), but not the tenant (LT). To say she has not been allowed into the rental unit to make repairs is a blatant lie.

The landlord's agent testified that the tenants had complained about a leak in the ceiling, and it turned out to be a dishwasher from a unit above leaking. In August, 2017 the landlord reimbursed the tenants the sum of $580.00.

The resident manager has advised the landlord's agent that she did not see the leaking in the ceiling and denies the video. Whenever the landlord had sent contractors to assess the leak, it wasn't detected. Whenever the resident manager arrived at the rental unit the tenants would close the door and not allow her in. The landlord has also provided a Repair List with invoices attached.

The tenants had also complained about the bathtub and the tenants have provided photographs showing a rust stain. The bathtub is tiled in and to repair or replace it, the tenants would not have any access to the bathroom for about 5 days.

The countertop in the kitchen was replaced once during the tenancy, and about 2 weeks later the tenants complained about it again but only in passing, saying that the new one is bubbling.

Analysis

Where a party makes a monetary claim for damages as against another party, the onus is on the claiming party to satisfy the 4-part test:

that the damage or loss exists;

1. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
2. the amount of such damage or loss; and
3. what efforts the claiming party made to mitigate any damage or loss suffered.

With respect to the tenants' claim of $1,000.00, the *Dictionary of Canadian Law* describes "harassment" as:

> "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

However, not every insult or incident is worthy of monetary compensation. The allegation made by the tenants is that the landlord has been harassing the tenant, JT since moving in, but not the other tenant. The resident manager did not testify or dispute the allegations made by the tenants, but remained in attendance for the hearing.

The landlord issued 2 notices to end the tenancy and the first was cancelled at the hearing on December 11, 2017. The landlord issued the second notice to end the tenancy on March 25, 2018. I have reviewed the Decision of the director and also note that the

landlord received a letter from other tenants in the rental complex indicating that they heard the tenant verbally abusing the onsite manager, and specifically:

- "everyone in the building hates you"
- "you are a fucking bitch"
- you are a "horrible manager"
- "I am going to cut a hole in the ceiling and make it wet."

Having heard the testimony and considering the evidentiary material, I am satisfied that the parties simply do not like each other, and that neither party has mitigated any impolite or rude behaviour. The tenant has not established mitigation, and I dismiss the tenants' $1,000.00 claim for harassment.

With respect to the tenants' $2,600.00 claim for lack of peace, I am satisfied that the tenants have established that the tenancy has been devalued by the leak in the ceiling causing multiple entries by the landlord's agents or contractors, given that the landlord and contractors could not immediately detect a leak. I am also satisfied from the evidence that each time the resident manager was called or emailed about repairs required, the tenants were met with some resistance and that the landlord deemed the complaints to be an annoyance rather than an obligation of the landlord. There is little to prove that the resident manager was ever denied entry to the rental unit other than the hear-say testimony of the landlord's agent, which is disputed by the tenants.

I have reviewed the Repair List and invoices provided by the landlord which show that the landlord's contractors investigated the leak complaint several times, but no leak was detected in the rental unit until October 18, 2017, when the drain hose from the leaking dishwasher in the unit above was drained and capped off, but the ceiling wasn't repaired until December 9, 2017. The landlord has also provided evidence of retaining a contractor to use equipment to detect moisture in May, 2017 and none was detected in the suite or hall ceilings.

I have also reviewed the strings of emails which show that on May 26, 2017 the tenants made the request for repairs by email to the ceiling, cabinet doors and under the kitchen sink. In June the repairs were made except for the leak in the ceiling. No more emails have been provided for this hearing until October 2, 2017, however comments have been added beside some of the emails by the tenants, one of which states that in May, 2017 the landlord credited the tenants half a month's rent. That would amount to $587.50. The landlord's agent testified that the landlord has reimbursed the tenants the sum of $580.00 in August, 2017.

In the circumstances, I find that the tenancy has been devalued and wasn't repaired until December 9, 2017, and the same justification should apply. The parties' testimony differs

with respect to whether the reimbursement was given in May or August, 2017, however I find that it is for the first half of the tenancy, and the tenants have established half a month's rent for the balance of the tenancy until repaired, or $587.50. I also find that the circumstances were aggravated by the landlord failing to finish the ceiling repairs and left a hole from October 18 to December 9, 2017. The tenants were not denied any portion of the rental unit, and I find that the aggravating damages are nominal, and I grant a nominal amount of $100.00 in favour of the tenants.

With respect to the bathtub, the first tenant testified that the landlord was ordered to replace or repair the bathtub at the hearing on December 11, 2017 however that Decision clearly states that, "I also grant the Tenants leave to reapply for a repair order with respect to the kitchen cabinet doors and the bathtub. It will be up to the Arbitrator on that application to determine whether the Landlord fulfilled their obligations pursuant to section 32 of the *Act,* whether a repair order should be made, or compensation given to the Tenants." No orders were made with respect to the bathtub.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on June 30, 2018 and the tenancy will end at that time.

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 $787.50. 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: April 30, 2018

Residential Tenancy Branch