Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDCT, FF

Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act (the *Act*) for:

1. Cancellation of One Month Notice to End Tenancy for Cause under Section 47 of the *Act*;
2. A Monetary Order for damage or compensation under Section 67 of the *Act;*
3. A Monetary Order for reimbursement of a security deposit more than the permissible amount under Section 19 of the *Act*;
4. A Monetary Order for reimbursement of rent increase more than the permissible amount under Section 41 of the *Act*;
5. An Order compelling the landlord to perform repairs under Section 62(3) of the *Act*;
6. An Order for compensation for harassment (breach of quiet enjoyment) under section 28 of the *Act*; and
7. Recovery of the filing fees to this application from the landlord pursuant to section 72 of the *Act*.

The tenant CE appeared on behalf of both tenants. The landlord's agent (the landlord's daughter) appeared on behalf of the landlord (the *landlord*). No witnesses were called. Both parties were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

The landlord testified she was served with the tenants' Application for cancellation of a Notice to End Tenancy for Cause dated February 18, 2018 sent by registered mail on or about that date and received by her on or about February 20, 2018. As the landlord is

unsure of the exact date she received this package, I deem the landlord has received it on February 23, 2018, pursuant to Section 90 of the *Act*.

The landlord testified she was served with the tenants' Amendment to an Application for Dispute Resolution filed April 12, 2018 and sent by registered mail on that date and received by her shortly thereafter. As the landlord is unsure of the exact date she received this package, I deem the landlord has received it on April 17, 2018, pursuant to Section 90 of the *Act*.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issue(s) to be Decided

- Are the tenants entitled to a cancellation of One Month Notice to End Tenancy for Cause under Section 47 of the *Act*;
- If the tenants are not successful in cancelling the One Month Notice to End Tenancy for Cause is the landlord entitled to an Order of Possession under Section 55 of the *Act*.
- Are the tenants entitled to a Monetary Order for damage or compensation under Section 67 of the *Act;*
- Are the tenants entitled to a Monetary Order for payment of a security deposit made more than the permissible amount under Section 19 of the *Act*;
- Are the tenants entitled to a Monetary Order for payment of rent increase more than the increase permissible under Section 41 of the *Act*;
- Are the tenants entitled to an Order compelling the landlord to perform repairs under Section 62(3) of the *Act*;
- Are the tenants entitled to an Order for monetary compensation for harassment (breach of quiet enjoyment) under Section 28 of the *Act*; and
- Are the tenants entitled to recovery of the filing fees to this application from the landlord pursuant to Section 72.

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspect of the claims and my findings are set out below.

The parties agree on the following facts. This month-to-month tenancy of a house including a basement suite began on July 1, 2017 at a monthly rent of $2,500.00 payable on the first of each month in advance. Only for the month of July 2017, the parties agreed the tenant would pay a reduced rent of $1,700.00 because the basement suite in the unit was undergoing repairs from flooding. The tenant paid the landlord a security deposit in the amount of $1,250.00 and a pet deposit in the amount of $400.00 for total deposits of $1,650.00 (the *deposits*). There is no written Residential Tenancy Agreement. The tenant has paid $2,500.00 monthly rent since August 1, 2017.

Both parties acknowledged receipt of each other's documents and evidentiary materials. The parties agreed the tenants had been served with the landlord's One Month Notice to End Tenancy for Cause (*One Month Notice*) on February 14, 2018 by leaving a copy in the mail box at the tenants' residence. The tenants submitted a copy of the One Month Notice into evidence which indicated it was issued on February 12, 2018 with an effective vacancy date of March 31, 2018.

As grounds for issuance of the One Month Notice, the landlord claimed the tenants put the landlord's property at significant risk, engaged in illegal activity that has damaged the landlord's property, and failed to carry out required repairs of damage to the unit. The landlord provided no evidence with respect to the claim of illegal activity, so relies on the remaining two grounds as follows:

- The tenants put the landlord's property at significant risk; and
- The tenants failed to carry out required repairs of damage to the unit.

The landlord provided testimony contradicted by the tenants in support of these grounds as follows:

- The tenants broke a fence at the rear of the property and, while subsequently mostly repaired by the tenants, the lock still has not been replaced, thereby endangering the security of a stored boat, being the personal property of, the landlord's son;
- Without the landlord's authorization, the tenants replaced filters in the furnace;

- Without the landlord's authorization, the tenants tried to fix the furnace causing damage to the panels which were repaired at the landlord's expense;
- The tenants caused the furnace to stop working when the tenants briefly placed items too close to the exterior duct because of which the landlord incurred a repair expense;
- The tenants caused a fire hazard by operating an extension cord for lights and power tools outside the house without the landlord's authorization;
- The tenants painted the interior of the premises without the landlord's authorization in a color not approved by the landlord;
- Without the landlord's authorization, the tenants did yard work including converting portions of the yard to vegetable and plant gardens; and
- Without the landlord's authorization, the tenants removed portions of the bathroom flooring during the time the bathroom was being repaired by a plumber hired by the landlord.

The landlord submitted as evidence several letters to the tenants repeatedly warning the tenants not to conduct repairs or to do any work whatsoever inside or outside the premises without the landlord's authorization. The landlord testified the tenants had been frequently warned to contact the landlord before undertaking any work whatsoever and the tenants nevertheless continued to do the work detailed above without authorization.

The tenant denies these assertions or claims. The tenants submitted many texts, emails, photographs, and letters.

The tenants testified as follows: the landlord authorized some of the work for which the landlord agreed to compensate the tenants, the damage to the furnace was caused by the previous occupant of the rental unit, the work the tenants did was of a nature enhancing or improving the premises (such as landscaping) and not of a damaging nature, no hazards of any kind were created, instructions of the landlord were promptly carried out with respect to remediation (returning the garden to sod, for example), and the tenants were prevented from repairing the bathroom floor by the landlord through the express written instruction of the landlord, and the refusal of the landlord to let the plumber assigned to do the work back onto the premises.

The tenant acknowledged responsibility for minor damage to the bathroom floor, but testified that the tenants were at the time and remain willing to do the necessary, related repairs.

The tenants claim a monetary order for reimbursement for the following:

Paint and supplies	850.00
Labour	570.00
Furnace filters	64.92
Smoke and carbon detectors	58.67
Total	1,543.59

The landlord denies granting approval to the tenants to incur these expenses and states the landlord is under no obligation to reimburse the tenants. No written evidence was submitted of any agreement by the landlord to compensate the tenants for these expenses.

With respect to the security deposit and rent increase, the parties agree as follows. Before July 1, 2017, the tenants had been living in the premises as a subtenant. The tenants rented part of the unit from the previous occupant and paid $1,700 rent a month. The tenants paid the previous occupant a security deposit of $850 which was never given to the landlord. In June 2017, the landlord obtained an Order of Possession against the previous occupant who moved out without returning the security deposit of $850 to the tenants. Subsequently, the tenants entered into a rental agreement with the landlord to rent the entire unit.

The tenants claim reimbursement from the landlord for the $850 security deposit paid to the previous occupant. They also claim reimbursement for the increase in rent from the amount paid to the previous occupant ($1700 a month for a portion of the unit) to the current rent ($2500 a month for the entire unit) from August 1, 2017 to date.

The tenants request an order compelling the landlord to perform carpet cleaning, to complete bathroom repairs begun by the landlord, and to clean furnace ducts.

The tenants claim constant harassment and loss of quiet enjoyment from the landlord. The tenants testified the landlord (particularly her son) repeatedly comes to the unit without notice, uses the unit for storage of personal belongings, exhibits disturbing and unprovoked hostility, asks the tenants to perform tasks and then does not compensate the tenants, blames the tenants unfairly, exaggerates, and reacts unreasonably and with unnecessary hostility to well meaning efforts of the tenants to care for the unit to the best of their ability.

Analysis

Notice for Cause

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the One Month Notice.

Pursuant to section 90 of the *Act*, the tenants are deemed served with the One Month Notice on February 17, 2018.

The landlord must show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that the tenants have put the landlord's property at significant risk and/or the tenants have failed to carry out required repairs.

I accept the evidence of the parties there have been many repairs and tasks performed by the tenants inside and outside the rental unit. However, I find more convincing the tenant's characterization of the work as inconsequential or improvements, normal activities permissible to a tenant, damage caused by the previous occupant, unreasonable overreaction by the landlord (particularly the landlord's son), or activities resulting from a misunderstanding as to the nature of the authorisation from the landlord or her son.

I accept the tenants' testimony the landlord's property was not put at serious risk. As well, I accept the tenants' evidence they are willing to repair the damage they caused to the bathroom floor and are prevented in doing so by the landlord.

In reaching this conclusion, I note the letter of February 20, 2018 from the tenants to the landlord's son, stating in part as follows:

> *The bathroom floor was not 'ripped up'. A small section, consisting of 4 – 6x6 tiles of linoleum was accidentally damaged while removing calkiing from the wall, floor and side of the tub. Whoever did the caulking previous to our moving in did a sub-par job with the incorrect materials….. [the plumber, Steve] is following your instructions to not complete the work.*

> *In fact, Steve, the plumber, has stated to you numerous times that he would take responsibility for the accidental damage to the flooring and repair and replace the flooring at no charge to you. The replacement of the entire bathroom floor is unnecessary as the floor is one small piece of linoleum and therefore not simply repairable. You have till this date refused this offer and told him he was not to return to the house and complete the outstanding work.*
>
> *I ask you [to] approve, in writing, for Steve (Mid city Plumbers) to return to the site and fix/replace the flooring. And to approve the new flooring he suggests would be the best option. If there is any charge that comes from this I will pay Steve directly as it was our mistake. [sic]*
>
> *…*
>
> *I am enclosing a copy of the 'condition inspection report' which clearly states that the bathroom caulking is to be replace and that the toilet needs to be repaired. This was signed by you and myself back in August 2017 and we are still waiting for these repairs to be completed. [sic]*

I find the tenants remain willing to pay for an appropriate portion of the repairs and are stopped from doing so by the landlord's son who wrote to the tenants a letter dated February 25, 2018 stating as follows:

> *You are not to repair anything at this property…*

This incident and the landlords' refusal to complete the bathroom repairs demonstrates the landlord's reactions as occasionally unnecessary and combative.

Considering the evidence and the testimony, I find on a balance of probabilities that the landlord has not established that the tenants put the landlord's property at significant risk or failed to carry out required repairs of damage to the unit. The landlord has failed to establish cause for ending this tenancy.

Nevertheless, I caution the tenants that the premises are not their property. The tenants do not have the right to make changes to the property or the rental unit, such as painting or installing gardens, and continued and repeated failure to comply with their obligations may be found sufficient grounds in the future to end the tenancy.

I therefore grant the tenants' request for an Order setting aside the One Month Notice.

Monetary Order

The landlord submitted evidence of repeated oral and written notice to the tenants not to conduct repairs or to incur expenses with respect to the premises without obtaining prior authorization. The tenants failed to do this and as a result are not entitled to a Monetary Order for compensation for the claimed expenses incurred for any unauthorized work.

Security Deposit

The tenants' claim with respect to the security deposit of $850 lies against the previous occupant who is not a party to these proceedings. The tenants have no claim in this regard against the landlord.

Rent

Similarly, the rent the tenants paid to the previous occupant was based on an agreement between the tenants and that occupant. The landlord named in this Application was not a party to that agreement.

As such, when the tenants entered into a tenancy agreement with the landlord it was a new and separate agreement. The parties agreed on the rent of $2500.00 for the unit at the beginning of the tenancy agreement. Therefore, no unauthorized increase in rent has taken place. The tenant has no claim in this regard against the landlord.

Repairs

The Condition Inspection Report on move-in dated August 23, 2017 signed by the parties contains handwriting which states in part as follows (to the best of my understanding):

> *Page 2:*
>
> *Tub/Shower/Taps/Stopper – caulking to be fixed*
>
> *Toilet – needs fixing at base*
>
> *Page 3:*
>
> *Repairs to be completed at start of tenancy: Bathroom caulking needs replacing (pictures), Toylet (Not Worn Carpet Dining Room) Piece Damage Corner Light switch*

[*sic*]

The tenants provided uncontradicted testimony the landlord promised to replace the carpets in the living room and the dining room. As well, the above-mentioned letter of February 20, 2018 from the tenants to the landlord states as follows:

> *Please have the carpet guys also contact me about making an appointment to replace the carpet in the living and dining room as that repair is also outstanding.*

With respect to the cleaning of the ducts, the letter goes on to say:

> *We also are requesting at this time that the furnace air ducts be cleaned out as that is a yearly maintenance that the landlord should be doing every fall. You did not do any maintenance on the furnace this fall or last spring. The ducts are full of debris and dust from the basement construction back in winter 2016/17. And seems to have never been clean out. …. The Dust that is circulating when the furnace comes on is disgusting and we are going through furnace filters monthly instead of every 3 months as recommended*. [sic]

Section 32 of the Act provides as follows:

> *(1) A landlord must provide and maintain residential property in a state of decoration and repair that*
> *(a) complies with the health, safety and housing standards required by law, and*
> *(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

While the wording of the Condition Inspection Report is unclear, on a balance of probabilities, I accept the tenants' uncontradicted evidence that the landlord has promised to replace the carpets and I hereby direct the landlord to do so within one month of the date of service of an Order pursuant to Section 62(3) of the *Act*.

In consideration of the testimony and evidence of the parties who agree on this specific repair issue, I also find the landlord has promised to repair the bathroom in the report (and, indeed, has started to do so) and I hereby direct the landlord to do so within one month of the date of service of an Order pursuant to Section 62(3) of the *Act*.

Considering the testimony and evidence of the parties, particularly with respect to major construction work in 2017 in the basement of the premises, I accept the tenants'

evidence on a balance of probabilities that the landlord has failed to assure the furnace ducts are clean of dust and debris. I find this failure is contrary to Section 32 of the *Act* requiring the landlord to maintain the premises in a state of repair suitable for occupation. I therefore direct the landlord to conduct cleaning of the furnace ducts within one month of the date of service of an Order pursuant to Section 62(3) of the *Act*.

Loss of Quiet Enjoyment

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

> *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*
>
> *Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*
>
> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

The tenant claims inconvenience and discomfort from the landlord's frequent and ongoing visits, rude and hostile behaviour, and repeated complaining about matters of little consequence or for which the landlord (or her son) are responsible. Considering the evidence and testimony of both parties, on the balance of probabilities, I find the landlord's activities do not form a basis for a claim of breach of the entitlement to quiet enjoyment but are more over-reaction, unnecessary vigilance, and excessive caution without amounting to actual interference with quiet enjoyment.

However, I caution the landlords that the tenants are entitled to quiet enjoyment of the premises without substantial interference.

Conclusion

The tenant is entitled to a cancellation of One Month Notice to End Tenancy for Cause under Section 47 of the *Act*.

The tenant's application for an Order compelling the landlord to perform repairs under Section 62(3) of the *Act* is granted and the landlord is ordered to replace the living room and dining room carpets, to repair the bathroom and to clean the furnace ducts, all within one month of service of an Order.

The remainder of the tenant's applications are dismissed without leave to reapply.

As the tenant was successful in cancellation of the One Month Notice and obtaining orders for repair, the tenant is entitled to recovery of the filing fees to this application from the landlord pursuant to section 72.

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: May 7, 2018

Residential Tenancy Branch