Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT MNRT OLC RR

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* ("the Act") for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause ("1 Month Notice") pursuant to section 47 *Act;*
- a monetary award pursuant to section 67 of the *Act;*
- an Order directing the landlord to comply with the *Act* pursuant to section 62;
- an Order directing the landlord to make repairs to the rental unit pursuant to section 33 of the *Act;* and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both the tenant and the landlord attended the hearing. All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

The tenant confirmed receipt of the landlord's 1 Month Notice on February 27, 2018, while the landlord confirmed receipt of the tenant's application for dispute resolution. I find that the tenant was duly served under the *Act* with the 1 Month Notice, while the landlord was duly served under the *Act* with the tenant`s application for dispute.

Both parties confirmed receipt of each other`s evidentiary packages and confirmed that they had adequate time to review the contents of the packages.

Issue(s) to be Decided

Can the tenant cancel the landlord`s Notice to End Tenancy? If not, is the landlord entitled to an Order of Possession?

Can the tenant recover a monetary award?

Should the landlord be directed to comply with the *Act* and make repairs to the rental unit?

Is the tenant entitled to a return of the filing fee?

Background and Evidence

Testimony from the landlord explained that this tenancy began on August 1, 2012. Current rent is $2,232.00 per month, and a security deposit of $975.00 paid at the outset of the tenancy, continues to be held by the landlord.

The tenant sought a cancellation of the landlord's 1 Month Notice for Cause ("1 Month Notice") which he received in February 2018. Additionally, the tenant sought a monetary award for $6,836.00 and a return of the filing fee.

The reasons cited on the 1 Month Notice are as follows:

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;*
- *put the landlord's property at significant risk*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

Tenant has assigned or sublet the rental unit without the landlord's written consent

Both tenant and landlord submitted a large volume of evidence to the hearing. All of this evidence along with the testimony of both parties was considered and is summarized below.

The landlord explained that he served the tenant with a 1 Month Notice because of serious concerns he had regarding the current state of the rental unit, the large amount

of damage that he reported identifying during routine inspections of the rental unit and because of past attempts by the tenant to sublet the rental unit without the landlord's permission.

In detailed written submissions presented, the landlord explained that he has had ongoing concerns with the tenant, particularly with the manner in which he had failed to adequately care for the rental unit. The landlord's written submissions documented incidents starting August 1, 2012, noting that the relationship between the parties was strained from the outset of the tenancy. The landlord continued by detailing an allegation of a police incident at the apartment in 2013 and then chronologically described problems he identified in 2014, including; a burn mark on a counter top, a broken microwave handle, a late rent payment, an attempt to sublet the apartment without permission, an alleged disagreement with a neighbour, and an issue with the garburator. All items described in the landlord's written submissions were documented as a result of monthly inspections he performed. The landlord supplemented his description of the tenant's attempt to sublet the apartment by testifying that the tenant had posted the second bedroom for rent on a notice board in the building and through an online advertisement.

The landlord's written chronology continued by documenting a fire in 2015 which began in the tenant's BBQ and required the intervention of the emergency services. No reports of damage were described but the landlord noted that the tenant failed to inform him of this incident. The remainder of the written submissions contained a description of a single incident in 2016 involving a broken freezer, and then noted in great detail numerous problems that the parties had in 2017 and 2018 regarding a variety of issues including, but not limited to; a rent increase, inspections of the rental unit, and the landlord's overall concern regarding the cleanliness and state of the apartment.

In addition to the lengthy and detailed written submissions, the landlord's evidence included numerous photos purporting to show the state of the apartment at the start of the rental unit in 2012, and three more recent photos which the landlord argued were current evidence of the dishevelled and damaged property.

The tenant disputed all of the allegations made by the landlord and the reasons cited on the 1 Month Notice. The tenant acknowledged that a pot had accidently burnt the countertop and said that he had never willfully damaged the rental unit. The tenant described the rental unit as being subject to "normal wear and tear" and noted that many of the items which the landlord had described as being damaged, in particular the blinds and the cupboards, were either older items which were original to the building, or

subject to normal wear and tear after six years of occupation. The tenant did not dispute that some items had become broken during the tenancy, in particular, the microwave and fridge handles, along with the garburator, but emphasized that he had never purposefully damaged the rental unit.

The landlord explained that the floors, paint, faucet and blinds were new in June/July 2012 and that the cabinets, kitchen and bathroom, while original to the building 21 years ago, were in perfect condition when the apartment was handed over to the tenant in 2012.

In addition to an application to cancel the landlord's 1 Month Notice, the tenant has applied for a monetary award of $6,836.00. The tenant said this figure represented $3,000.00 for loss of a storage locker, $100.00 for his time/labour related to the work he did replacing a garburator, and $3,736.00 in lost use of the apartment related to a water shutdown that took place in the building while repair work was being performed, along with a figure representing loss of quiet enjoyment related to what he described as "on-going harassment" from the landlord.

The tenant argued that the original tenancy agreement between the parties was meant to include storage; however, following its drafting, the landlord purportedly altered the agreement to remove storage as being included with the rental unit. The tenant said he had suffered greatly as a result and had been forced to live in a cramped apartment and to find alternative accommodation for his items because of the landlord's "deception" in removing this item from the final tenancy agreement which the parties signed. The landlord denied that he had cheated the tenant out of storage and said that he clearly explained at the start of the tenancy that storage was not to be included. The landlord said that the tenancy agreement signed between the parties showed that storage was not included, and it was the tenant's responsibility to read the document before it was signed.

The second part of the tenant's application concerned compensation for his time/labour following an issue with the garburator which eventually led to its replacement. The tenant said that he informed the landlord of the problem, but that the landlord failed to act in a timely fashion, forcing the tenant to perform the necessary repair on his own. The tenant argued that $100.00 was fair compensation for the time he spent repairing the garburator.

The final portion of the tenant's monetary application concerned loss of quiet enjoyment of the rental unit which he argued resulted from the landlord's frequent inspections of

the apartment, the loss of water in the apartment during renovations to the building, and what he described as “harassment” and “unreasonable number of inspections” by the landlord. In addition, the tenant described an incident in which he alleged that the landlord had illegally entered his suite.

The landlord denied that he in any way “harassed” the tenant and disputed all aspects of the tenant’s testimony. The landlord said that he never entered the premises as described by the tenant, and acknowledged that while his inspections of the unit were frequent, they never occurred more than one time per month and always included written notice as was required by the *Act*. The landlord confirmed that he had visited the unit multiple times when renovations to the pipes were being done in the building, but explained that this was the only occasion when he attended the apartment more frequently than one time per month. The landlord argued no compensation should be granted to the tenant for loss of water during the day because of renovations in the apartment, as this burden was shared by all persons in residence at the building, and the renovation schedule was clearly posted in the building noting the specific days on which work was to take place.

The tenant withdrew his application directing the landlord to comply with the *Act* and for renovations to be made to the rental unit.

Analysis – 1 Month Notice

In February 2018, the landlord served the tenant with a 1 Month Notice as follows:

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;*
- *put the landlord’s property at significant risk*

Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property

Tenant has assigned or sublet the rental unit without the landlord’s written consent

The landlord provided some oral submission to supplement his detailed written submissions and photographic evidence purporting to depict the manner in which the tenant had severely damaged the rental unit, placed the property at risk and sublet the rental unit without the landlord's written consent.

After considering the landlord's oral testimony and a very careful review of the evidence, I find that the landlord has provided insufficient evidence indicating that that the tenant has done any of the items listed on the 1 Month Notice. The tenant acknowledged that some damage had been done to the apartment; however, neither the items which were damaged, nor the tenant's actions can be described as causing extraordinary damage, seriously jeopardizing the health, safety or lawful right of the landlord, putting the property at *significant* risk or *significantly* interfering with the landlord. While, I agree with the landlord's assessment that some damage has been done to the apartment during the tenant's occupation, I find that the damage is not severe enough to lead to an end of tenancy, and is more the result of the parties having a vastly different opinion regarding cleanliness. I find that the issues described by the landlord, specifically with reference to the bathroom and cupboards, to show that some damage has occurred in the rental unit; however, as mentioned previously, this damage is not sufficient to warrant an end of tenancy.

Finally, the landlord described an incident regarding a fire in a BBQ that occurred in 2015 and an attempt to sublet the second bedroom in 2014. While, this incident had the potential to cause significant damage to the rental unit, it was dealt with accordingly and there is little indication that any damage at all resulted from the tenant's actions. Furthermore, I find that this incident, along with the tenant's alleged attempts to sublet the second bedroom in 2014, to demonstrate past transgressions on the part of the tenant which should have been addressed at that they occurred. The landlord explained that he had some medical issues which prevented him from previously dealing with his concerns around the rental unit; however, only one notice to end tenancy (that before me today) was ever served on the tenant in the six years of tenancy, and the landlord did not apply for an Order of Possession. This indicates to me, that while the parties may have their differences of opinion regarding cleanliness, the tenant at no time represented a danger or significantly interfered with the apartment, its owner or placed anything or anybody at great risk. For these reason I find that the tenant has succeeded in his application to cancel the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

Analysis – Tenant`s Application for a Monetary Award

As mentioned previously, in addition to an application cancelling the landlord`s 1 Month Notice, the tenant has applied for a monetary award of $6,836.00 representing a loss of quiet enjoyment ($3,000.00), labour required to repair a garburator ($100.00) and loss of a storage locker ($3,736.00).

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove the entitlement to a monetary award.

Section 16 of the *Residential Tenancy Policy Guideline* examines the issues of compensation in detail. It notes:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 provides that, “the tenant is entitled to quiet enjoyment including, but not limited to, rights to the following reasonable privacy and freedom from unreasonable disturbance.”

Based on the evidence and testimony presented, I decline to make an award related to loss of quiet enjoyment for the experiences described by the tenant. The tenant argued that the landlord unreasonably harassed him, that he suffered as a result of the large scale plumbing work being done in the rental unit and that the landlord scheduled multiple, unnecessary visits to the rental unit. Furthermore, the tenant alleged that the

landlord illegally entered his suite on one occasion. A review of the evidence and testimony shows that the landlord attended the property frequently, but in a manner allowable under the *Act*, and provided the tenant with adequate, written warnings of the visits. It is obvious that the parties have a strained relationship which has contributed to the hostilities, but I find that both parties are equally to blame for these hostile actions which have led to different versions of the same story. For these reasons, I dismiss this portion of the tenant`s application for a monetary award.

The second portion of the tenant`s application concerns a refund of $100.00 for labour that he argued was required to replace a garburator in the unit. I find that the tenant was under no obligation to repair this garburator and cannot claim compensation. Section 33 of the *Act* states that:

A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

An “Emergency Repair” is defined by Section 33 as follows –

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 find that the repair of a garburator does not fulfill these criteria and that the landlord was under no obligation to make an immediate repair to such an item. Little evidence was presented that the landlord did not address the tenant’s concern related to the garburator, or that he was not prepared to take action to ensure it was fixed. For these reasons, I decline this portion of the tenant’s application.

The final portion of the tenant’s application concerned an award of $3,000.00 for loss of a storage locker. The tenant alleged that the landlord had failed to provide him with a storage locker as per the terms of their original, oral agreement. The landlord disputed this and provided a copy of the signed tenancy agreement which indicated that no

storage was included with the rental unit. I find that the best evidence of the agreement that the parties had related to storage is the final, written and signed terms of tenancy that the parties agreed to. It specifically stated storage was not included. For these reasons, I decline to award the tenant an award of $3,000.00 for loss of storage.

As the tenant was partially successful in his application he may recover the $100.00 filing fee pursuant to section 72 of the *Act*. In lieu of a monetary award, the tenant may withhold $100.00 from a future rent payment on **one** occasion.

Conclusion

The tenant was successful in cancelling the landlord's 1 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant`s application for a monetary award is dismissed.

The tenant may recover the $100.00 filing fee from the landlord. The tenant may withhold $100.00 from a future rent payment on **one** occasion, in full satisfaction of this.

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