



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding JACUZZI PREMIUM POOL & SPA
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LRE MNDCT OLC OT PSF
 OPC FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant has filed an amended application seeking an order limiting or setting conditions on the landlord's right to enter the rental unit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord provide services or facilities required by the tenancy agreement or the law.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions.

During the course of the hearing, the parties advised that the tenant has vacated the rental unit, and the landlords' application for an Order of Possession is withdrawn. Similarly, the tenant withdrew the applications for an order limiting or setting conditions on the landlord's right to enter the rental unit; an order that the landlords comply with the *Act*, regulation or tenancy agreement; and for an order that the landlords provide services or facilities required by the tenancy agreement or the law.

The parties agree that evidence has been exchanged with the exception of 2 text messages provided to the Residential Tenancy Branch by the landlords which were not provided to the tenant. All evidence other than those text messages are considered in this Decision.

Issue(s) to be Decided

The issue remaining to be decided is:

- has the tenant 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 for serving a notice to end the tenancy for cause rather than a notice to end the tenancy for landlord's use of property?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2017 and expired on March 31, 2018 thereafter reverting to a month-to-month tenancy which ultimately ended on May 31, 2018. Rent in the amount of \$1,500.00 per month was 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 tenant in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment above a business.

The tenant further testified that the landlord told the tenant he was going to do some major construction immediately and wanted to move into a lunch room near the rental unit because the landlord and his wife had separated, and he mentioned putting a door through the laundry room. Construction started on March 8, 2018 which caused the power source in the rental unit to become sensitive, and the fire exit was blocked off without any notice to the tenant. The air conditioner cut off, and it's very warm in the rental unit. Also, other power outlets would short out, turning off and on, sometimes more than once in a day. The water was also shut off a handful of times, but once only by the City for road construction or something.

The tenant's son has autism, and the landlord spoke very inappropriately about him. The landlord has been rude and harassing the tenant, and the tenant has provided copies of in excess of 80 text messages as evidence for this hearing.

Nine days after construction started, the landlord gave the tenant a One Month Notice to End Tenancy for Cause and showed the rental unit to prospective tenants, pushing the tenant to move out. The tenant received the Notice on March 20 when her roommate said it was found on the door. A copy has been provided as evidence for this hearing, and it is dated March 19, 2018 and contains 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:
 - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property;
 - adversely affect the quiet enjoyment, security, safety or physical well being of another occupant;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant denies putting the landlord's property at significant risk or engaging in any illegal activity. The landlord did not have cause to issue the Notice, and the tenant seeks the last month of rent in the amount of \$1,500.00 as compensation.

The landlord testified that construction was done adjacent to the rental unit and it didn't affect the tenant. The electricity problem happened 3 times where the landlord's contractor turned power off while the tenant was blow drying her hair not realizing that it would affect the bedroom.

The landlord texted the tenant advising her that water would be shut off, and it was off for about 5 minutes. Then a rupture in the City service affected the water in the rental unit.

The Notice was issued due to a constant marihuana smell in the office below. On 3 occasions customers smelled it. The business below the rental unit is a retail store which sells hot tubs and other merchandise. The Addendum to the tenancy agreement specifies no smoking.

After the Notice was issued, the tenant and roommate made things difficult for the landlord. The roommate slammed doors, shouldered the landlord while going downstairs, pushed into the landlord with his chest and got physical, so the landlord called police. The police officer said it didn't constitute an assault, however on 4 occasions the roommate was aggressive toward the landlord.

The tenant wanted the landlord to give a notice to end the tenancy instead of giving notice herself to move out, so that the tenant could get a free month of rent.

The rental unit was re-rented for June 1, 2018.

Analysis

In order to be successful in a claim for damage or loss, the onus is on the claiming party 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 other party'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 claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidence of the parties, including the copious amount of text messages provided by the tenant.

The tenant is of the opinion that the landlord ought to have given the tenant Two Months Notice to End Tenancy for Landlord's Use of Property prior to commencing renovations. I disagree. If the landlord had issued such a notice, that would be in bad faith and if the tenant had disputed it, the tenant would likely have succeeded in having it cancelled because there clearly was no need for the tenant to move out of the rental unit during construction. The landlord did not issue the Notice, and therefore the tenant is not entitled to compensation equivalent to one months rent under that section of the *Act*.

The tenant also claims loss of quiet enjoyment. I find that the landlord, once moving into another suite adjacent to the tenant's suite, and the tenant's roommate were equally as annoying to each other, and the tenant and her roommate did not mitigate any damage or loss suffered by the landlord's actions.

The landlord issued a One Month Notice to End Tenancy for Cause, which is not unlawful. The landlord claimed that marihuana smell was permeating into the landlord's business. I agree that it didn't put the landlord's property at significant risk, and I also agree that not purchasing renter's insurance was not a breach of a material term of the tenancy agreement. However, the construction caused some power outages and water issues, and the *Residential Tenancy Act* permits me to make an order for nominal damages, where the damage or loss suffered isn't really measureable, but meant to compensate the tenant as an acknowledgement that there has been an infraction of a legal right. The tenant is entitled to quiet enjoyment. I grant a monetary order in favour of the tenant in the amount of \$100.00.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

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: June 28, 2018

Residential Tenancy Branch