



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC FFT LAT LRE MNDCT OLC PSF RR

Introduction

This hearing was convened in response to applications by the tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The tenants requested:

- cancellation of the landlord’s 1 Month Notice for Cause pursuant to section 47 of the *Act*;
- an Order directing the landlord to reduce rent for their failure to provide facilities agreed upon pursuant section 65 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62 of the *Act*;
- a monetary award for damage and loss pursuant to section 67 of the *Act*;
- an Order setting limits on the landlord’s right to enter the property pursuant to section 29 of the *Act*;
- an Order allowing the tenants to change the locks pursuant to section 70; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both tenants and the landlord attended the hearing. All parties present were provided an opportunity to present affirmed submissions, call witnesses and cross-examine one another.

The landlord acknowledged receipt of the tenants’ application for dispute and of the tenants’ evidentiary package, while the tenants confirmed receipt of the landlord’s 1 Month Notice for Cause and landlord’s evidentiary package.

Issue(s) to be Decided

Can the tenants cancel the landlord's 1 Month Notice?

Are the tenants entitled to a monetary award? Can the tenants recover the filing fee?

Should the landlord be directed to comply with the *Act*?

Should the landlord be ordered to provide services or facilities required by the tenancy agreement or law?

Should the landlord be directed to reduce the rent?

Should conditions be set on the landlord's right to enter the rental unit?

Can the tenants replace the locks on the rental unit?

Background and Evidence

Testimony provided to the hearing by the tenants explained that this tenancy began on April 15, 2016. Rent was \$3,500.00 per month at the outset of the tenancy; however, this was reduced to \$3,300.00 per month. A security deposit of \$1,750.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenants said they are seeking a monetary award of \$35,000.00. They explained that this figure represented \$8,000.00 for an injury the tenants' daughter sustained on the property, loss of quiet enjoyment for \$14,200.00 and loss of their yard for \$12,800.00 (16 months @ \$800.00/month). In addition the tenants seek a reduction in rent.

The tenants' alleged construction and redevelopment on the property began on Easter Sunday in 2016. They explained no notice of this work was provided to them and that commercial excavation equipment, numerous trades' people and several heavy machines have occupied the property since this redevelopment began. The tenants explained they occupied a home that was surrounded by a significant amount of land, and that this land was slated to be redeveloped by the landlord to accommodate 65 new homes. The tenants said they had no warning or notice of this redevelopment and only discovered it was taking place when heavy machinery began work on the property. The tenants stated they have since lost a significant amount of the property they previously

occupied, have no backyard, six feet of property on either side of the home and 13 feet in the front yard.

The tenants described the numerous ways which their quiet enjoyment has been affected by this loss of property. Specifically, they said; they lost the entire use of the back yard forcing them to lose the use of their swimming pool, that several tradespeople come and go from the property as the work progresses and that a garage and parking on the property were lost.

The tenants alleged the landlord had been very abusive and aggressive to them and had failed to perform any repairs on the rental home. The tenants said their daughter slipped inside the home and suffered a deep cut to her knee requiring four stitches. The tenants are seeking \$8,000.00 for this injury, arguing the landlord failed to provide them with a safe environment and that the landlord did not address safety issues identified to him. The tenants allege the landlord's failure to act on these warnings led to this accident.

The tenants are also seeking a reduction in rent from \$3,200.00 to \$2,000.00 per month. The tenants argued that the property they currently occupy falls well below any acceptable standards and their ability to enjoy the property has been significantly interfered with as a result of the large scale commercial redevelopment of the surrounding property.

The final portion of the tenants' application concerns an Order directing the landlord to comply with the *Act* as it relates to inspections of their rental home along with an Order allowing them to change the locks on the rental property. The tenants said people have been knocking on their door and have been present on the property since the redevelopment began. The tenants explained they suffered a break-in following the start of this redevelopment and no longer feel safe on the property.

The landlord disputed all aspects of the tenants' application for a monetary award. The landlord argued he made it "very clear" at the outset of the tenancy that he planned to redevelop the property. The landlord said his initial short, fixed-term lease with the tenants represented his desires to have tenants for a limited period of time, so as to avoid persons being disturbed by the commercial redevelopment. The landlord said it was "well known" he would be redeveloping the property and alleged the tenants had presented a false account of their knowledge as it related to the surrounding land.

The landlord said he had attempted to access the property on numerous occasions but his notices for entry were ignored. The landlord explained he would happily address any issues identified to him as requiring attention, but that he could not fix the home if he was not given access. As part of his evidentiary package, the landlord provided copies of two notices to enter the property which he said were ignored by the tenants.

Analysis – 1 Month Notice

The tenants have applied to cancel a 1 Month Notice for Cause (“1 Month Notice”) issued to them on May 15, 2018. A copy of this 1 Month Notice was provided to the hearing by the tenants. The reason cited on page two of the 1 Month Notice was handwritten and stated as follows: *Entry denied for inspection and repairs. First entry denied on May 10, 2018. Second entry denied on May 16, 2018.*

Section 55(1) of the *Act* reads as follows:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord's notice to end tenancy complies with section 52{form and content of notice to end tenancy}, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the 1 Month Notice entered into evidence and the landlord's sworn testimony describing the document served on the tenant, I find that the landlord's 1 Month Notice does not comply with section 52 of the *Act*. This section states:

52 In order to be effective, a notice to end tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) state the grounds for ending the tenancy,** and
- (e) when given by a landlord, be in the approved form.

I find that the landlord served the tenants with a 1 Month Notice that fails to state a ground permissible under section 47 of the *Act* for ending the tenancy. The landlord testified that he issued the 1 Month Notice because the tenants did not allow him access to the rental unit on two occasions to perform an inspection of the property. This is not a reason cited on a 1 Month Notice for ending a tenancy. I therefore find that the 1 Month Notice issued to the tenants to be invalid and find that it fails to comply with section 52 of the *Act*. The tenants are successful in their application cancelling the landlord's 1 Month Notice.

Analysis – Monetary and Other relief

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 tenants to prove their 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.

The tenants have applied for a monetary award due to loss of quiet enjoyment, because of an injury their daughter suffered in the rental home and because of the loss of their backyard to redevelopment.

I will begin by examining their application as it relates to loss of quiet enjoyment.

Section 28 of the *Act* states, tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance.

This issue is expanded upon in Section 6 of the *Residential Tenancy Policy Guideline* which says, "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 of a breach of the entitlement to quiet enjoyment."

After considering the testimony of both parties and reviewing all documentary evidence, I find it irrefutable that a significant construction project is being undertaken by the landlord on the property. The question therefore is whether the tenants had adequate notice of this redevelopment and whether the tenants are entitled to compensation because of a loss of quiet enjoyment that has occurred as a result of this construction. I find that insufficient evidence was presented at the hearing by the tenants that they did not receive adequate notice of the landlord's intention to redevelop the surrounding property.

I find the testimony of the landlord to be convincing and accept his testimony that he initially entered into a short, fixed-term tenancy agreement because the tenants had originally told him they were only planning on remaining on the property for a limited time while they awaited for their own home to be built. I find that this intention of the landlord to have the property vacant so that construction could commence to be reasonable and I have difficulty accepting the tenants allegation that they woke up on Easter Sunday to discover major redevelopment on their property without having been given any notice. Additionally, I find it difficult to reconcile why the tenants waited over

two years to submit an application for dispute related to a monetary award for loss of quiet enjoyment and question the timing as it relates to the issuance of the landlord's notice to end tenancy. The tenants testified that tenant D.W. was suffering from health problems that prevented her from adequately addressing the issues identified in their application. Despite these limitations, I find waiting over two years since redevelopment began to submit an application for dispute to be raise adequate doubt as to the veracity of their application. For these reasons, I dismiss the portion of the tenants' application for a monetary award as it relates to loss of quiet enjoyment and loss of a yard.

The second portion of the tenants' application relates to compensation of \$8,000.00 because of an injury their daughter incurred in the home. Again, while I do not dispute that a fall occurred, I find the tenants failed to provide sufficient evidence in the form medical letters or physio referrals that justify their monetary application. The tenants argued that they feared for the long term health of their daughter as it related to this injury however the tenants did not sufficiently demonstrate that their daughter would suffer from psychological distress as a result of the injury, had a limited earning capacity as a result of the injury nor did the tenants adequately connect the landlord's alleged inactions which the events that led to their daughters fall. For these reasons, I dismiss this portion of their application for a monetary award.

In addition to an application for a monetary award the tenants have applied for a reduction in rent and for Orders directing the landlord to comply with the *Act*, and an Order allowing them to change the locks to the rental unit.

A review of the tenancy agreement signed by the parties indicates that the landlord agreed to provide the tenants with; water, stove and oven, dishwasher, refrigerator, carpets and window coverings as part of their rent for \$3,500.00. Little evidence was presented that the landlord has failed provide the tenants with the items identified in the tenancy agreement, and testimony presented at the hearing explained that rent was in fact reduced to \$3,300.00 per month. I find that the tenants' use of the front yard has not been restricted and that no provisions in the tenancy agreement provided the tenants with exclusive use of the entire property now subject to redeveloped. For these reasons I decline to award the tenants a reduction in rent.

Should the landlord wish to enter the rental unit, the landlord is reminded to comply with section 29 of the *Act* and to provide the tenants with at least 24 hours written notice. This notice must include the following information: (i) the purpose for entering, which

must be reasonable & (ii) the date and time of entry, which must be between 8 a.m. and 9 p.m. unless the tenant agrees otherwise.

I find an Order directing the landlord to comply with the *Act* or allowing the tenants to change the locks to be unnecessary. Sufficient notice was previously provided to the tenants of the landlord's intention to enter the suite.

As the tenants successfully challenged the landlord's 1 Month Notice, they pay recover the \$100.00 filing fee associated with their application. In place of a monetary award, the tenants may withhold \$100.00 from a future rent payment on ONE occasion.

Conclusion

The tenants' application to cancel the landlord's Notice to End Tenancy was successful. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may withhold \$100.00 from a future rent payment on ONE occasion in satisfaction for a return of the filing fee.

The tenants' application for a monetary award is dismissed without leave to reapply.

The remainder of the tenants' application for Orders directing the landlord to comply with the *Act*, for a reduction of rent and for an Order allowing them to change the lock is dismissed.

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: July 26, 2018

Residential Tenancy Branch