Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes
CNC, MNDC, RR, FF

Introduction

This hearing dealt with an application by the tenant to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated February 14, 2011, with an effective date (automatically adjusted) of March 31, 2011.

The tenant also applies for other remedies: compensation for costs of $1850 (one month's rent) for time spent making this application and attending to matters related to this hearing, a rent reduction, and administrative penalties for landlord's, "abuse of the notice to end process". The tenant also applied for an Order of Possession for the tenant, which in this matter is not necessary and is as a result *preliminarily dismissed.*

The landlord orally requested an Order of Possession.

Both parties attended the hearing and were given opportunity to present relevant evidence, provide sworn testimony, make submissions and attempt to resolve their dispute(s). Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the notice to end tenancy valid and issued for *sufficient* cause to end the tenancy?
Should the Notice to End dated February 14, 2011 be set aside?
Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

When a tenant applies to cancel a Notice to end for Cause, the onus is on the landlord to prove the Notice to End was issued for *sufficient* reasons, and that at least one reason must constitute *sufficient* cause for the Notice to be valid. The landlord is not

required to prove all reasons stipulated for ending the tenancy. The burden of proof is the tenant's to prove their claim for compensation.

The tenant disputes the reasons stipulated in the Notice to End. I do not have benefit of the Notice to End, but, the parties agree that the Notice to End was dated February 14, 2011 and contained the reasons for ending the tenancy as:

- *Tenant or person permitted on the property by the tenant has: Significantly interfered with or unreasonably disturbed another occupant or the landlord.*

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

- *Non compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.*

It should be noted that this tenancy is the subject of a Director's decision and order dated December 08, 2010 respecting, in part, an order for the landlord to conduct certain repairs.

In respect to the landlord's first reason, the landlord testified that in September 2010 the tenant displayed, "unacceptable behaviour" in her use of "inappropriate language" in an exchange with a neighbour of the residential property.

In respect to the landlord's second reason the landlord testified that the tenant has breached a material term of the tenancy agreement - Part 11 – Repairs – Landlord. *The landlord shall not unreasonably delay in causing necessary alterations or repairs to be done with due diligence.* . . . (continued).

In respect to the landlord's third reason the landlord testified the tenant has been frustrating the landlord's efforts to meet their obligations in compliance of an order to conduct repairs dated December 08, 2010. They testified they gave the tenant several notices to enter to make the required repairs. The landlord provided a letter dated December 20, 2010, asking the tenant to call the landlord to schedule a time and date to conduct the repairs. As well, the landlord provided a hand-written list of an inspection mutually conducted by the tenant and the landlord, which each party acknowledges was done / written in "early January" (2011). The landlord also referenced the tenant's evidence of the landlord's Notice of Entry dated February 04, 2011: requesting entry of the unit on February 09, 2011 between the hours of 11:00 and 2:00 p.m., and identifying

the reason for entering the unit as " 3) to carry out repairs ". The landlord testified that the tenant provided the landlord with a letter on the same day (February 04, 2011), which included, amongst other things, the tenant's objections to the notice of entry dated February 04, 2011 in respect to the 'deemed' effective date of the notice and questioning the validity of the reasons for the notice. The landlord subsequently followed through with the Notice to Enter and tried to conduct the intended repairs on February 09, 2011 but hesitated to enter the unit without full consent of the tenant. The landlord referenced a letter to the tenant dated February 16, 2011 advising the tenant that they had tried several times to coordinate the repairs ordered by the Director but that the tenant was interfering with the landlord's obligations.

The tenant's response to the landlord's allegations were that the landlord had yet to complete the repairs in accordance with the order of the Director and that the landlord has not provided her with specific or sufficient particulars of the reasons the landlord required entry into her unit for repairs, and that the notice of entry should provide for more advanced notice. The letter was also critical of the landlord and their work and included a quantum of posturing.

The tenant testified that she is a lawyer and claims she expended 20.4 hours attending to the landlord's communications and filing for dispute resolution and preparing for this hearing which she claims would otherwise have been spent practising law She seeks one month's rent compensation as well as an additional rent reduction for her loss of quiet enjoyment in having to attend to the landlord's Notice to End which they claim is frivolous and an abuse of the whole process.

Analysis

On preponderance of the evidence before me and on a balance of probabilities I have reached a decision.

The tenant originally sought certain repairs and the landlord was ordered to conduct the repairs. Naturally, an abundance of co-operation would have to occur for this to take place. The landlord asserted that the tenant has interfered with their ability to comply with the order for repairs. I find that the tenant's approach with the landlord clearly, in the least, intimidated the landlord's efforts and has not contributed toward accomplishing the repairs the tenant herself sought in the first place. I find that In the face of the tenant's opposition, the landlord thought it prudent to back off any repairs on February 09, 2011 (although they would have been justified in entering the unit to do so) and sought recourse in the Notice to End process, whether rightfully. I find the landlord's action a genuine attempt to resolve an impasse and meet a legal obligation to

comply with an order. Therefore, I find the landlord is not wholly responsible for not meeting the strict confines of the order to make repairs – also given the extensive holiday period within the timelines of the order.

I find that the landlord's first reason for ending the tenancy is dated five months before the Notice to End identified it and therefore I cannot accept that the incident upon which it is based was *significant* enough to the landlord or another occupant. Regardless, a single occurrence of such inappropriate behaviour is not *sufficient* to end a tenancy. I find the landlord's second reason is rooted in a term of the tenancy agreement which imparts a duty on the landlord and not the tenant. I find the landlord's third reason used for ending the tenancy is not applicable to the tenant: the order placed an obligation of compliance on the landlord. As a result, I find the landlord has not advanced *sufficient* cause to end the tenancy, and the landlord's Notice to End is therefore **set aside and is of no effect.** The tenant has come perilously close to losing her tenancy, and the landlord is at liberty to issue a new valid Notice to End for *sufficient* reasons.

The tenant is reminded that a document of the landlord is *deemed* to be received, by definition, *unless proven otherwise*. The tenant provided evidence proving she received the landlord's Notice to Enter on February 04, 2011 in responding to it in writing on the same day. In such circumstances, Section 90 of the Act would not be applicable. It was known to the tenant that the landlord had an order for repairs and the tenant clearly intimidated the landlord and their right to enter the unit to comply with the order. The landlord may well have cause to seek an order of the Director authorizing entry of the tenant's unit [Section 29(1)(d)] if they can prove the tenant is obstructing their efforts to comply with the order to make repairs.

My finding the landlord's Notice to End as *insufficient* cause to end the tenancy does not translate into it being *frivolous.* As previously stated, I accept the landlord's action was an attempt in good faith to resolve an impasse and meet their legal obligations and is not wholly responsible for not meeting the confines of the order to make repairs. As a result, I find no basis in the tenant's argument the landlord has recklessly contributed to the tenant's loss of quiet enjoyment; and, for which the tenant should be compensated, or that administrative penalties be imposed, or that an additional reduction in rent is appropriate.

Each party is solely accountable for how they choose to respond within their spiral of dispute – as to their time and expense. The time for which the tenant seeks compensation was at their discretion. Parties are not entitled to litigation costs. Whatever time the tenant expended on the dispute resolution process is the price of

litigation and theirs to bear. A party may request recovery of their filing fee. Therefore, **I dismiss** the tenant's claim for compensation and a rent reduction in their entirety, without leave to reapply.

During the hearing the parties agreed to the following and asked that I record it in this decision as follows:

- The parties agree that, at the exclusion of Section 90 of the Act, the landlord will provide the tenant with seventy two (72) hours notice to enter, by placing such notice through the tenant's mailbox.
- The parties agree that the landlord's notice to enter will contain enough particulars of the work / repairs to be conducted so as the tenant may make relevant preparations to accommodate the work / repairs.
- The parties agree that any necessary rescheduling of unfinished work can be arranged between the tenant and the responsible trades or the landlord, in their discretion.

As the tenant has been partially successful in their application, they may recover part of their filing fee in the amount of **$25.**

Conclusion

The tenant's application to cancel the Notice to End for Cause dated February 14, 2011 is granted. **I order** the landlord's Notice to End is **set aside** and is of no effect. The tenancy continues.

The balance of the tenant's application for a monetary order **is dismissed**, without leave to reapply.

I order that the tenant is at liberty to deduct **$25** from a future rent.

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*.