

DECISION

Dispute Codes CNC, MNDC, OLC, ERP, RP, LRE, FF

Introduction

This is an application filed by the Tenant seeking an order to cancel a notice to end tenancy for cause, a monetary order request for loss of quiet enjoyment, an order for the Landlord to comply with the Act, regulation or tenancy agreement, make emergency repairs for health or safety concerns, make repairs to the unit, suspend or set conditions on the Landlord's right to enter the rental unit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?

Is the Tenant entitled to a monetary order for loss of quiet enjoyment?

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order for the Landlord to make emergency repairs for health or safety concerns? Make repairs to the unit? Set conditions on the Landlord's right to enter the rental unit?

Background and Evidence

This Tenancy began on May 30, 2011 on a fixed term tenancy for 1 year ending May 31, 2012 as shown in the submitted signed tenancy agreement. The monthly rent is \$1,400.00 payable on the 1st of each month and a security deposit of \$700.00 was paid on May 30, 2011.

The Landlord's 1 month notice to end tenancy for cause was served on July 20, 2011 with a move-out date of August 31, 2011. The Tenant has confirmed receiving the notice and filing their application for dispute on July 29, 2011 with an amendment on August 18, 2011. Both parties have referred to the others evidence in detail during the hearing except for 1 late evidence package submitted by the Landlord on August 27, 2011. The Tenant states that two pages are missing from their package. The two pages consist of an email from the Landlord's younger daughter's fiancé who repaired an end cap for the gutter system and six photographs that depict the walkway and patio

area to the basement rental unit. I find that there is no bias to the Tenant for the missing two pages of evidence as the photographs shown are already submitted from both parties in their initial evidence package with different angles.

The Landlord lists the reasons for cause as the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, the Tenant has caused extraordinary damage to the property and that a Breach of a material term of the Tenancy Agreement that was not corrected within a reasonable time after written notice to do so. The Landlord states that on one occasion July 15, 2011 she heard "tremendous" noise coming from the basement rental unit. The Landlord went directly to the unit and tried to give the Tenant's verbal warning of the excessive noise. The Landlord also cites on one occasion that the Tenant's performed excessive trimming of plants in the enclosed garden area. The Landlord claim that the Tenant's breached condition #13 of the addendum conditions of the Tenancy Agreement of "pruning and trimming will be done by the landlady or someone appointed by the her", and the Landlord relies on the photographs submitted into evidence of the garden. The Landlord also states that the Tenant's breached a material term of the Tenancy Agreement by not telling her the truth. The Tenant disputes the claims made by the Landlord. The Tenant states in her direct testimony that she did trim the garden, but that the plants are healthier now than before. The Tenant states that some of the plants were in the same condition they were when the Tenancy began.

The Tenant has also made a monetary order request for \$3,450.00 consisting of \$2,000.00 for loss of quiet enjoyment, \$450.00 for loss of space and \$1000.00 for moving expenses in the event that they must vacate the rental. The Tenant cites substantial interference, harassment and attempts by the Landlord to enter the suite without a valid reason. The Tenant cites the same incidents brought forward by the Landlord in their claim.

The Tenant seeks to have the Landlord make emergency repairs for health or safety concerns and make repairs of the unit. The Tenant also seeks to suspend or set conditions on the Landlord's right to enter the rental unit. The Tenant states that on two occasions no valid reason has been made to inspect the rental unit. The Landlord disputes this, stating that on both occasions atleast 24 hours notice was given with a property inspection listed as the reason.

Analysis

As both parties have attended the hearing by conference call and have referred in detail to the evidence provided, I am satisfied that each party has been properly served with the notice and evidence packages.

I find based upon the conflicting evidence of both parties and a lack of evidence from the Landlord for the reasons of disturbance of the Landlord, breaching of condition #13 of the addendum conditions and breach of a material term of the tenancy has not been established. The Landlord has also failed to provide any written notice to the Tenant. The 1 month notice to end tenancy for cause is set aside. The Tenancy shall continue.

I find that the Tenant's have failed in providing sufficient evidence for a breach of quiet enjoyment. The Tenant's like the Landlord have cited the same incidents of disturbance and harassment. The Tenant's evidence does not disclose sufficient evidence to show that there is frequent and ongoing interference by the Landlord. A temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The Tenant has also stated in direct testimony that no monetary loss has occurred. The Tenant's claim that the over growth of the heather has caused a loss of space, but have not indicated in what way. Based upon the photographs submitted of the overgrowth, I find that no loss has been suffered. The area is also filled with personal effects under the covered patio and numerous potted plants. The Tenant's claims for moving costs are dismissed as these are costs not yet incurred as the Tenancy continues. The Tenant's monetary claim is dismissed.

Section 29 of the Residential Tenancy Act states,

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(b) **at least 24 hours and not more than 30 days before the entry**, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(2) **A landlord may inspect a rental unit monthly** in accordance with subsection (1) (b).

I find based upon the testimony of both parties that the Landlord has acted in good faith and that the Landlord may inspect the property as laid out in section 29. A monthly

property inspection is reasonable. The Tenant's request to suspend or set conditions on the Landlord has not been established and is dismissed.

I also find that the Tenant's have failed to provide any evidence of emergency repairs required for health or safety concerns. This portion of the Tenant's claim is dismissed.

As for repair issues, although the Tenant states that verbal notice was given, the Tenant's have failed to provide any details of specific repairs required or written notice to the Landlord to address these issues in a timely manner. I find that the Tenant must first give opportunity in writing to the Landlord to comply with the Act. As such, this portion of the Tenant's application is dismissed with leave to reapply.

As the Tenant has only been partially successful in their application, I order that the Tenant is entitled to recovery of \$25.00 of the filing fee. I order that upon receipt of this decision that the Tenant may withhold on one occasion \$25.00 from the next months rent due for October 2011.

Conclusion

The Landlord's notice to end tenancy is set aside and the Tenancy continues.

The Tenant's monetary claim is dismissed.

The Tenant's request for action by the Landlord is dismissed.

The Tenant may withhold on one occasion \$25.00 from the next months rent due for October 2011.

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: August 30, 2011.

Residential Tenancy Branch