DECISION

Dispute Codes CNC, CNR, RP, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) issued on September 1, 2011 pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) issued on September 1, 2011 pursuant to section 47;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to section 33; and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that the landlord posted the 10 Notice and the 1 Month Notice on her door on September 1, 2011. The landlords confirmed that the tenant handed them a copy of her dispute resolution hearing package on September 8, 2011. I am satisfied that the parties served one another with these documents and their evidence packages in accordance with the *Act.*

At the hearing, the landlords testified that they had received the tenant's late written evidence and were prepared to respond to that late evidence at this hearing. On this basis, I agreed to consider all of the evidence of both parties at this hearing.

At the hearing, the landlords made an oral request to end this tenancy on the basis of the two Notices they issued and to grant them an Order of Possession if the tenant's application were dismissed.

Issues(s) to be Decided

Should the landlord's 10 Day Notice be cancelled? Should the landlord's 1 Month Notice be cancelled? If either of the tenant's applications to cancel these notices is dismissed, are the landlords entitled to an Order of Possession? Should any repair orders be issued to the landlords? Should the tenant's rent be reduced? Is the tenant entitled to recover her filing fee for her application from the landlords?

Background and Evidence

This two-year fixed term tenancy commenced on June 15, 2011. Monthly rent is set at $2,500.00, payable in advance on the first of each month. The tenant is also responsible for heat and hydro. The landlords continue to hold the tenant's $1,250.00 security deposit and $1,250.00 pet damage deposit both paid on June 15, 2011.

Both parties entered into written evidence copies of the 10 Day Notice and the 1 Month Notice.

The landlords issued the 10 Day Notice for $250.00 in unpaid rent that they maintained had been owing since July 1, 2011. This amount was disputed by the tenant as she testified that she had an oral agreement with the landlords to allow her to pay for paint for her rental unit and deduct $250.00 from her July rent to compensate her for this expenditure. The tenant said that she attached a paint receipt in the amount of $235.00 to one of her rent payments. The landlords said that they never agreed to the $250.00 rent reduction for paint nor did they receive the tenant's receipt for the paint she purchased.

In the landlords' 1 Month Notice, the landlords cited the following reasons for the issuance of the Notice:

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

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 or the landlord;...*

At the hearing, I asked the landlords to explain what illegal activity they claimed the tenant was engaged in to support two of the three grounds they cited for their issuance of the 1 Month Notice. The female landlord said that they misunderstood this portion of the 1 Month Notice as they are not claiming that the tenant is involved in any activity that could be termed illegal. She said that the tenant continues to stomp on the floor and disturb her neighbours by this activity and by spraying water, chemicals and various combinations of animal urine and feces over the sides of her balcony onto the balconies of those who live below her. Both landlords agreed that none of the tenant's alleged actions are illegal. They said that the primary reason for their issuance of the 1 Month

Notice was on the basis of the interference and disturbance the tenant has caused the landlords and other occupants of this strata property.

Both parties entered considerable written and photographic evidence.

As part of the tenant's written evidence, the tenant submitted a 25-page Property Review Report prepared by an individual who works for a home inspection company. This included an extensive set of recommendations stemming from this property review. The Scope of the Review was described in the following terms in this Report:

The Client requested a limited, visual, walkthrough review of the above property to examine certain issues only (including cooking odours in the suite, balcony condition and the interior renovation of the suite). I revisited the property briefly on 26 September 2011 to review leakage reported by the tenant...

However, the issuer of this report also stated in the Scope of the Review that "this limited review is not a Home Inspection and is not intended to meet the normal Standards of Practice used by Home Inspectors." Given this caveat and the inspector's non-attendance at the hearing, it is unclear what weight, if any should be attached to this document.

Analysis – Tenant's Application to Cancel the 10 Day Notice

As noted at the hearing, the landlords' 10 Day Notice was incomplete. The landlords failed to indicate on their 10 Day Notice a date by which the tenant was expected to end the tenancy and vacate the rental unit. The only date they identified in this portion of the tenancy was 2011.

Section 46(1) of the *Act* establishes how a landlord may end a tenancy for unpaid rent "by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice." Section 46(2) of the *Act* requires that "a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*. Section 52 of the *Act* reads in part as follows:

> *52 In order to be effective, a notice to end tenancy must be in writing and must...*
>
> *(c) state the effective date of the notice...*

Since the landlords failed to identify an effective date for their notice, the landlords have not complied with the statutory requirement established under section 52(c) of the *Act,* I

find that the landlords' 10 Day Notice is of no effect. For these reasons, I allow the tenant's application to cancel the landlords' 10 Day Notice.

Analysis – Tenant's Application to Cancel the 1 Month Notice

As outlined above, the landlords agreed that there was no basis for their issuance of two of the three grounds cited in their 1 Month Notice. As such, the only grounds that the landlords continued to cite for issuing their 1 Month Notice was their claim that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

When a landlord issues such a notice and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice. This onus extends beyond the landlords' claim in this case that the tenant has been demanding and sends them many requests to repair items that the landlords feel are either beyond their scope for correcting in a strata property or are beyond their financial means.

While the landlord testified that many occupants of the building where the tenant resides have complained about this tenant's conduct, most of the letters entered into evidence would appear to revolve around one set of occupants who reside below the tenant. None of the people who issued the letters entered into evidence participated in this hearing as witnesses. Most of these complaints seem to be directed at issues which the tenant claimed to have addressed when she became aware of the concerns about noise and cleaning her balcony.

The tenant strongly denied the landlords' allegation that she cleans dog urine or dog feces off her balcony with chemicals and water sprayed onto balconies below hers. She testified that she does not allow her dogs onto her balcony. She also said that the noise issues were initiated by the occupants of the housing unit below her and that she cannot understand why they maintain she has been causing loud noises that offend them. The tenant explained that she and the occupants in the housing unit below her have what would appear to be an ongoing dispute regarding noise and cooking smells that the tenant maintained emanate from the occupants below her.

The tenant presented a witness who lives in one of the other housing units below her. At the hearing, he testified that he too has concerns about cooking smells coming from the housing unit below the tenant. Although he said that he had one problem with the tenant spraying cleaning liquid over her balcony and onto his, he said that she discontinued this practice when he raised his concerns with her. He testified that he is unaware of any unusual noises originating in her rental unit. His testimony did not

match with the landlords' claim that other occupants of the building, particularly those who live below the tenant, are significantly interfered with or disturbed by the tenant.

Overall I find there was insufficient evidence from the landlords to allow me to find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. While there is clearly a dispute between the tenant and those who occupy the housing below her, it is not clear to me that the landlords are entitled to end this tenancy on the basis of written evidence provided by the occupants of the housing unit below the tenant. The other written evidence the landlords have presented was rebutted by the tenant who provided a witness whose evidence more closely aligned with the tenant's evidence. The landlords were the only individuals who gave oral evidence on their behalf. They do not live on the premises, although they did live there prior to the commencement of this tenancy. The landlords do not have hands-on knowledge of most of the behaviours that they claimed the tenant was exhibiting that disturb other occupants of this building.

As I am not satisfied that the landlords have adequately met the burden of proof required of them to obtain an end to this tenancy for cause, I allow the tenant's application to cancel the 1 Month Notice.

The effect of the cancellation of both of the landlords' notices is that this tenancy continues.

Analysis – Tenant's Application for an Order Requiring the Landlords to Undertake Repairs and Authorization to Reduce Rent

In her written evidence, the tenant identified many features of the rental unit that she claimed were either inadequately maintained or otherwise dysfunctional. As outlined above, the inspector she retained to conduct "a limited walkthrough review of the property" identified many features of the rental unit that he apparently believed needed to be repaired or upgraded.

At the hearing, I noted that this tenancy has been in place since mid-June 2011. The tenant signed a two-year fixed term tenancy agreement on the basis of her inspection of the premises prior to signing that agreement. Many of the issues identified by the inspector are ones that were no doubt present when she signed her tenancy agreement. For example, any issues that the tenant had with the flooring of the balcony, the quality of trim and joints, and condensation on windows would have been evident when the tenant agreed to rent these premises. The tenant also submitted written evidence that she does not believe that the housing units in this strata are

adequately soundproofed and that the balcony and venting design of the building is deficient.

The parties included an addendum to their signed tenancy agreement and a very detailed list of items of note in the joint move-in condition inspection report of June 15, 2011. The tenant did not dispute the landlords' claim that the tenant was very thorough during the joint move-in condition inspection which took some three hours. The tenancy agreement, the addendum to that agreement and the joint move-in condition inspection report did not identify any repairs that needed to be completed by the landlords at the start of this tenancy.

The landlords submitted a lengthy list of repairs and improvements that the tenant has requested after she moved into the rental unit. The tenant's evidence also included a record of many requests she has made over a relatively short period of this tenancy. The landlords entered into written evidence copies of receipts for many repairs that they have undertaken. However, the landlords testified that the growing list of deficiencies that the tenant raised over the first few months of this tenancy have escalated to the point where it is unfeasible for them to continue incurring the costs that would be required to correct all of the issues that the tenant has with the rental unit.

At the hearing, the tenant testified that her major concerns are with the landlords' failure to address her concerns about venting which could be responsible for the cooking odours she finds offensive. Her witnesses' testimony that he too experiences problems from time to time with respect to cooking smells suggests that this may not be an issue that is limited to the tenant's rental unit, but could be in actuality a design issue in this building. As the landlords do not own the strata unit under the rental unit and cannot commit to changing the venting system in other units in the strata, the landlords' ability to remedy the venting problem may be limited. However, there may also be a remedy to the venting concerns and cooking smells that the landlords could institute either on their own or in concert with the strata council. For these reasons, I find that it would be reasonable to require the landlords to take more steps than appear to have been taken to date to clarify whether there is a solution that can be found for the problem with cooking smells and venting as they affect this rental unit.

I order the landlords to take action to ensure that the vents affecting this rental unit are inspected and cleared of any obstruction or blockages within one month of the issuance of this decision so as to enable the vents to operate effectively. If the landlords do not comply with this order, I allow the tenant to reduce her monthly rent by $200.00 per month until such time as this work has been done.

If the vents are operating as designed, I find that the tenant accepted that exposure to cooking smells and other occasional nuisances from other housing units (e.g., noise, common entries) was a feature of a living in a multi-family building to be taken into account when she entered into a tenancy agreement in close proximity to others.

As the tenant has been successful in her application, I allow her to recover her $50.00 filing fee from the landlords. To do so, I order the tenant to reduce her next monthly rental payment by $50.00.

Other than the rent reductions identified above, I make no other order allowing the tenant to reduce rent for services or facilities agreed to but not provided during this tenancy. I did not find the tenant's written or oral evidence identified sufficient justification to warrant a reduction in her rent for a loss of services or facilities over the first few months of her tenancy. At the hearing, the tenant also testified that her major problem with the rental unit was the cooking smell issue noted earlier in this decision. I find that many of the "deficiencies" the tenant noted in her rental premises were for items that existed prior to her signing her tenancy agreement. She did not take issue with these deficiencies before she agreed to rent these premises. I am satisfied that the landlords have for the most part attempted to accommodate the tenant's reasonable requests for repairs or upgrades.

Conclusion

I allow the tenant's application to cancel both the landlords' 10 Day Notice and 1 Month Notice. The effect of these decisions is that this tenancy continues.

I order the landlords to take action to ensure that the vents affecting this rental unit are inspected and cleared of any obstruction or blockages within one month of the issuance of this decision so as to enable the vents to operate effectively. If the landlords do not comply with this order, I allow the tenant to reduce her monthly rent by $200.00 per month until such time as this work has been done.

As the tenant was partially successful in her application, I allow the tenant to recover her $50.00 filing fee from the landlords. To accomplish this, I order that the tenant reduce the amount of her next monthly rental payment by $50.00.

I dismiss the tenant's application for an order to be allowed to reduce her monthly rent for services or facilities agreed to but not provided during this tenancy.

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*.