Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PENNY LANE PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC MND MNSD MNDC FF
CNC MNDC O

Preliminary Issues

At the outset of this proceeding the Tenant requested an adjournment because she was not able to get a hold of her advocate and because she has been ill. The Tenant stated that she sent her request for adjournment in writing on December 24, 2014, along with a copy of her application which she amended to increase her monetary claim.

The Landlord testified that she was not in agreement to an adjournment and argued that this hearing was initiated two months ago, back at the beginning of November 2013, to hear the Tenant's application. Therefore, she felt the Tenant has had ample time to prepare and/or arrange for an advocate. The Landlord also stated that the Tenant's application had not been formally amended; rather, she simply changed the amount of her claim on a photocopy and served it along with her written request for an adjournment on December 24, 2013. The Landlord also argued that it would be unfair to the owner to postpone this hearing because the owner is currently being fined $50.00 per week by the Strata Counsel, as a result of the Tenant's actions, and which are the basis of the eviction.

Residential Tenancy Branch Rules of Procedure, Rule # 6.4 sets out the criteria for an adjournment as follows:

> *Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:*
> *a) the oral or written submissions of the parties;*
> *b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];*
> *c) whether the* adjournment *is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;*
> *d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and*
> *e) the possible prejudice to each party.*

The Tenant's written request for an adjournment had not been received on file at the time of this January 2, 2014 hearing. Upon review of the Tenant's oral request, and her testimony, I find there to be insufficient evidence to prove the Tenant was ill or that she took reasonable steps to acquire the services of an advocate prior to this proceeding. Furthermore, there is no evidence before me which would indicate the advocate was too busy to assist the Tenant to prepare, during the two months preceding this hearing.

I accept the Landlord's submission and find the owner would be prejudiced if an adjournment was granted, given that the owner is being issued a weekly fine of $50.00 by the Strata Counsel due to the Tenant's actions. Accordingly, I declined to adjourn this proceeding and continued as scheduled.

There was no evidence before me which would indicate the Tenant's application had been properly amended to increase her monetary claim to $4,925.00. Accordingly, I find that I can only hear matters pertaining to the Tenant's original application for monetary compensation in the amount of $300.00.

Introduction

This hearing dealt with Applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed their application on December 13, 2013, seeking an Order of Possession for Cause and Monetary Order for damage to the unit, site or property; to keep the security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed her application on November 8, 2013, seeking an Order to cancel the Notice to end tenancy for cause and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; however, no monetary amount was listed. The Tenant submitted an amended application on November 12, 2013 which included a dollar amount for her monetary claim in the amount of $300.00.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice be upheld or cancelled?
2. If upheld, should the Landlord be granted an Order of Possession?
3. Should the Landlord be granted a Monetary Order?
4. Should the Tenant be granted a Monetary Order?

Background and Evidence

The Tenant testified and confirmed that the Landlord's submission of tenancy documents were correct. Specifically, the tenancy started on October 1, 2012, but the Tenant was granted access to the unit on September 15, 2012. Rent is payable on the first of each month in the amount of $775.00 and on September 10, 2012 the Tenant paid $387.50 as the security deposit. The Tenant signed the Strata Form "K" on September 10, 2012, the same date she signed the tenancy agreement. The parties conducted a move in inspection and signed the condition inspection form on September 14, 2012.

The Landlord testified that the owner is seeking to end this tenancy in accordance with the 1 Month Notice to end tenancy issued for cause that was posted to the Tenant's door on October 28, 2013. The Landlord pointed to her written submission which outlines a chronological list of events and warning letters issued to the Tenant. She stated that the letters dated September 18th and 23rd, 2013, were mailed to the Tenant and the letters dated October 22, 24, and 28th were all posted to the Tenant's door.

The Landlord submitted that the 1 Month Notice was issued to the Tenant because she failed to return the common yard area back to its original condition. She said the Tenant created a garden along a length of cedars in the common yard area which was against the Strata rules. The Tenant has refused to remove the garden, even after being advised that the Strata would begin charging a fine of $50.00 per week until the garden is removed.

The Tenant confirmed that she created a garden in the common area by planting flowers and vegetables but argued that she had verbal permission from the Property Manger to do so. She claims this garden was there prior to her moving in and she simply added more plants to it. She insisted that she had not changed the garden and only added some fertilizer. She later clarified that the fertilizer was in fact a mulch type of fertilizer that her friend delivered for her in March 2013 which was in a pile by the retaining wall. She has since cleaned up that pile by spreading the fertilizer mulch over her garden.

The Tenant argued that she is being evicted because of her complaints against an upstairs tenant who rents from the Strata Vice President. She indicated that she had an altercation with this upper tenant back in September and that is what started her being evicted.

The Tenant stated that she did not take any action when she received the initial letters from the Landlord about the garden. She did not contact the advocate until sometime around November 8, 2013. The advocate told her to start putting her complaints about the other tenant in writing, which she has been doing.

The Tenant said she could not remember the exact date she found the eviction notice and stated that she was out of town for some time. She could not remember if she got the notice before or after Halloween but she does recall speaking to the former tenant whom was going to be her advocate.

The Landlord denied that she gave the Tenant verbal permission to plant a garden in the common area. She argued that she told the Tenant she could have potted plants as long as they were located on her patio. The Landlord testified that their monetary claim of $900.00 consists of $300.00 for landscaping fees to return the common area to its original state, as per the quote she provided in evidence; plus $550.00 for eleven weeks of Strata fines at $50.00 per week; plus the $50.00 filing fee.

The Tenant testified that her monetary claim of $300.00 was to compensate her for losing her covered parking stall and to help offset the Strata fines. She later clarified that the $300.00 was strictly for loss of covered parking from November 14, 2012 to January 2014. She stated that she was original assigned two parking stalls (# 3 and # 10). # 3 was a covered carport stall which was taken away from her effective November 14, 2012. She argued that the covered parking is why she agreed to take this rental unit.

In closing the Landlord confirmed that the Tenant was reassigned different parking by the Strata which was not covered. She denied the allegations that this eviction had anything to do with the altercation between the Tenant and the upper tenant. Rather, she argued that the Strata president and vice president do not reside at the rental unit and it was only when they attended in September to deal with the altercation that they first saw the changes the Tenant had made to the common yard area. She pointed out that the Strata president or vice president had previously inspected the yard, just prior to their Annual General Meeting in November 2012, and there was no garden at that time.

The Tenant argued again that she had not changed anything, just added fertilizer. Then she stated that she also dug a ditch for proper water drainage to prevent dirt from being washed onto her patio.

Analysis

Landlord's Claim

Upon review of the 1 Month Notice to End Tenancy issued October 28, 2013, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

In the absence of proof to the exact date the Notice was received, I find the Tenant is deemed to have received the Notice on October 31, 2013, three days after it was posted to her door, in accordance with section 90 of the Act. The effective date of the Notice is therefore, **November 30, 2013,** in accordance with section 47 of the *Act.*

The Notice was issued pursuant to Section 47(1) of the Act for the following reasons:

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

When considering a 1 Month Notice to End Tenancy for Cause the Landlord has the burden to provide sufficient evidence to establish the reasons for issuing the Notice to End Tenancy.

In this case there is undisputed evidence that the Tenant has planted a vegetable and flower garden in the common area of the Strata property. The Tenant argued that she had verbal permission to plant her garden.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove she had permission to plant her garden. The only evidence before me to support this allegation was disputed verbal testimony which I find insufficient to meet the Tenant's burden of proof.

The Landlord submitted documentary evidence which included copies of letters written to the Tenant, e-mails, and a copy of the Strata Bylaws. Section 3(1)(e) of these Bylaws prohibit an owner, tenant, or occupant, from using the common property or common assets in a way that is contrary to a purpose for which the strata lot or common property is intended expressly or by implication on or by the strata plan.

I accept the Landlord's submission that the Tenant has breached the Strata Bylaws by planting the garden in the common area and that the Tenant failed to take appropriate action to return the common property to its original state, even after written notice was served upon the Tenant.

Based on the aforementioned, I hereby find the Landlord provided sufficient evidence to uphold the 1 Month Notice. Accordingly, I dismiss the Tenant's application to cancel the Notice and I grant the Landlord an Order of Possession.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

The Landlord is seeking compensation to have the property returned to its original state, based on a quotation. As this work has not yet been completed, the Landlord has not yet suffered such a loss. Therefore, I find the claim for landscaping fees to be premature. Accordingly, the Landlord's claim for landscaping fees is dismissed, with leave to reapply.

The evidence supports the Landlord has suffered a loss of $50.00 per week from fines levelled by the Strata Counsel. Therefore, I find the Landlord has provided sufficient evidence to support their claim to recover the fines and I award them the amount claimed from October 18, 2013 to the week of January 2, 2014 of **$550.00 (11 x $50.00).**

The Landlord has been successful with their application; therefore I award recovery of the **$50.00** filing fee.

Tenant's Claim

As noted above, I have upheld the 1 Month Notice and granted the Landlord an Order of Possession. Accordingly, I dismissed the Tenant's request to uphold the Notice.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service of facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

I accept the undisputed evidence that the Landlord terminated the Tenant's access to covered parking. Based on the foregoing, I find the value of the Tenant's tenancy was reduced as the result of her losing access to covered parking. In the absence evidence to the contrary, I find the Tenant's claim for compensation for loss of covered parking for the 14 month period from November 2012 to January 2013 to be reasonable and I award her **$300.00.**

Offset Monetary Claims – I find that these claims meet the criteria under section 72(2)(b) of the *Act* to be offset against each other as follows:

Landlord's Monetary Award ($550.00 + $50.00)	$600.00
LESS: Tenant's Monetary Award	-300.00
Offset amount due to the Landlord	**$300.00**

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act,* once the Landlord regains possession of the unit.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service.** This Order is legally binding and must be served upon the Tenant.

The Landlord has been issued a Monetary Order in the amount of **$300.00.** This Order is legally binding and must be served upon the Tenant.

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: January 02, 2014

Residential Tenancy Branch