Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Dawn Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF
DRI, CNC, MNDC, RR, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application. The tenant's application disputes an additional rent increase and applies for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

The hearing did not conclude on its first day and was adjourned for a continuation of testimony and closing submissions by the parties. The named landlord attended both days of the hearing and represented the landlord company as well. Also, the tenant attended the hearing on both days and called one witness. The parties also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to each other, however the landlord provided an evidence package which he stated was sent to the tenant by registered mail on March 13, 2014. The tenant had not received the package prior to the hearing date, and I decline to consider the evidence because it was not provided within the time required by the Residential Tenancy Branch Rules of Procedure. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision, with the exception of the late evidence provided by the landlord.

No other issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?
- Should the notice to end tenancy be cancelled?
- Has the tenant established a rent increase that is contrary to the *Residential Tenancy Act* or the regulations?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of quiet enjoyment?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord testified that this tenancy began as a month-to-month tenancy. The rental unit is generally rented as a vacation rental during the summer months. The tenant agreed to a fixed term and a tenancy agreement was signed by the parties on June 16, 2012. A copy has been provided which states that the tenancy starts on July 13, 2012 on a month-to-month basis, and for a fixed length of time ending on June 30, 2013, for rent in the amount of $1,200.00 per month payable on the 1st day of each month. A new fixed term was agreed to by the parties in November, 2012 for a tenancy to commence July 1, 2013 and to expire June 30, 2014. Rent in the amount of $1,400.00 per month is payable in advance on the 1st day of each month. Both agreements state that at the end of the fixed term the tenancy ends and the tenant must move out of the rental unit. Both also contain an addendum. The landlord testified that there are no rental arrears, and the tenant still resides in the rental unit.

At the outset of the first tenancy, the landlord collected a security deposit in the amount of $600.00 as well as a pet damage deposit in the amount of $600.00, all of which is still held in trust by the landlord.

Notice to End Tenancy

The landlord further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on February 13, 2014 by posting it to the door of the rental unit. A copy of the notice has been provided and it is dated February 13, 2014 and contains an expected date of vacancy of March 31, 2014. The reason for issuing the notice are: "Tenant or a person permitted on the property by the tenant has significantly interfered

with or unreasonably disturbed another occupant or the landlord," and, "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 also owns adjoining property to the rental unit, and since January, 2014 there have been 3 incidents. On January 28, 2014 the landlord and spouse were moving a new tenant into another house on the rental property. The tenant approached the new tenant and told her where she could go or not go on the property quite aggressively. After the tenant left, the new tenant commented, "Is she going to be here long?"

Then on February 2, 2014 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the rental unit. The tenant shouted threats to the landlord screaming and stating, "I'm going to sue your ass." The shouting was within ear-shot of other tenants on the property.

On February 6, 2014 a physiotherapist attended the property to see the landlord's daughter but went to the rental unit by mistake. The physiotherapist was early for the appointment, and the landlord was not at home. When the landlord arrived, he found the physiotherapist in tears and it took 20 minutes for her to explain what had happened. She told the landlord that the tenant came out screaming and shouting, pointing and wouldn't listen to an explanation. Her behaviour was very upsetting. Also provided is a letter written by the physiotherapist which states that she was startled by a loud and aggressive female voice yelling, "What are you doing on my property?!" It also states that the physiotherapist tried to calm the tenant, but she continued to yell, "Get off my property!" while pointing her hand at her to leave. The physiotherapist tried to explain the reason for being there, but the tenant continued to yell in an angry and abusive tone to "Get off her property!"

Another letter has been provided that states that the writer rents land from the landlord and has a few storage trailers on the property. While at the property in the summer of 2013, a woman ran towards the writer screaming and swearing that he was going to hurt her dogs, but he tried to console her to explain who he was and that her dogs were not in any danger, but she got more upset cursing, swearing and threatening to have the writer thrown off the land and that he had no right being there.

With respect to a breach of a material term of the tenancy, the landlord testified that Addendum #14 to the tenancy agreement states: "14 Pets must be kept under control at all times. Excrement must be cleaned up immediately." The tenant pays no respect to that and the landlord's kitchen looks out onto the driveway of the rental unit, so that's his view. On February 10, 2014 the landlord sent the tenant an email asking her to pick

up the droppings in the driveway. The tenant responded on February 12, 2014 asking why she would bother to pick it up. It hasn't been any better, and the tenant continues to use the path and not pick up her dog's droppings.

The landlord also alleged during testimony that the tenant is required to have contents insurance which is a term in the addendum to the tenancy agreement, and has advised the landlord that the insurance is no longer in place. An email dated December 14, 2013 from the tenant to the landlord has been provided which states that the tenant does not have content insurance any longer.

Also, the tenant has been repeatedly late paying rent. The landlord has provided evidence of receiving rent late for the months of January, February and March, 2014 and the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in February, 2014. The tenant paid the rent within 5 days.

The landlord also testified that he did not want to go to arbitration and willingly offered the tenant to a reduced rate of $200.00 per month in the email dated February 10, 2014, and would agree to end the tenancy prior to the end of the fixed term without penalty. It also warns that the tenant's shouting, screaming and abusive language the landlord encountered the previous week when the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served is unacceptable. That same email also asks the tenant to pick up the dog poop and deposit the bags of poop in the garbage. The tenant's email response dated February 12, 2014 states that she picks up after her dogs every other day, sometimes on the third day, and questions why the landlord would tell her to do it after almost 2 years of the tenancy.

The tenant testified that the rental unit had been advertised as a private vacation setting. The tenant has post-traumatic stress disorder as well as fibromyalgia and privacy and a stress free environment are important. The landlord's guests ignore No Trespassing signs, and the landlord doesn't tell his guests which area is the landlord's. The tenant has been very patient with people and denies being abusive or aggressive. With respect to the landlord's alleged incident described in the letter by the person who stores trailers on the property, the tenant has provided an email she had sent to the landlord explaining that it was the other person who was rude and aggressive, and that she feared for her safety as a result of his strange behaviour, i.e. not getting out of his vehicle to talk and refusing to provide his name. The email also states that the man said he came to get tires out of his trailer and pays rent to keep them there in a yelling manner, and the tenant, "… told him I've never been spoken to in such a manor & he should find somewhere else to park his f***ing trailers…"

The tenant also denies that her behaviour with the physiotherapist was upsetting to the physiotherapist, but does not deny that she was assertive.

With respect to dog feces, the tenant testified that she picks up the area regularly, but the landlord's dogs run freely on the property and that some of the feces come from wildlife, such as coyotes. The tenant's written material states that she took pictures of the landlord's dog's piles all over common areas, but has not provided any of those photographs.

Analysis

Where a notice to end tenancy is disputed by a tenant, the onus is on the landlord to prove the effectiveness and reasons for issuing it. I have reviewed the notice to end tenancy, and I find that it is in the approved form and contains an expected date of vacancy that is consistent with the *Residential Tenancy Act.* With respect to the first reason for issuing the notice, I find that the tenant has been assertive and perhaps aggressive, but I find no evidence of unreasonably disturbing another occupant or the landlord with the exception of the landlord's testimony that the tenant was rude when the landlord issued the notice to end tenancy for unpaid rent. The incidents with the person who stores trailers on the property and the physiotherapist are not occupants of the property, and in both cases the landlord was not there. The only evidence of a disturbance to other occupants is the landlord's undisputed testimony that the tenant interfered with new tenants moving in by telling them where they were permitted to be on the property and where they were not. Although I find that the tenant ought to leave that to the landlord, I cannot find that the new tenants were unreasonably disturbed, only commenting to the landlord about how long the tenant would be there.

With respect to the landlord's claim of breaching a material term of the tenancy agreement, it is clear that the addendum specifies cleaning up after the dogs immediately. The tenant has not done so, and has been reminded by the landlord. The *Act* states that a breach of a material term of the tenancy requires written notice, and if the tenant has not corrected the breach within a reasonable time after that written notice, the landlord has cause to issue a notice to end tenancy. I find that the landlord gave the tenant written notice in an email dated February 10, 2014. The tenant's response is an email dated February 12, 2014 stating that she does so every other day or every third day, and questions why she should. The landlord issued the notice to end tenancy on February 13, 2014. I find that the landlord then had good reason to believe that the tenant felt her issues were more important to respond to in the email she sent the landlord, or the tenant had no intention of taking the request seriously and had no intentions of complying. Therefore, I find the landlord had cause to issue the notice to end tenancy.

The *Act* also permits a landlord to issue a 1 Month Notice to End Tenancy for Cause if a tenant is repeatedly late paying rent, and there is a box to check on the form. In this case, the landlord did not check that box, but I find that paying rent on time is a material term of the tenancy. The landlord served the tenant with a notice to end tenancy at the beginning of February, 2014 for failure to pay rent on time, which is written notice, and the tenant also paid rent for January and March, 2014 late.

In the circumstances, I find that the tenant was given written notice to pay rent on time and to pick up after the dogs immediately. The tenant responded by paying rent within 5 days of being served with the notice to end tenancy, which, I find makes that notice of no effect. However, the tenant responded to the landlord's request to pick up dog feces by saying she does so every other day or every third day, and questions why the landlord would tell her about it after 2 years of the tenancy. I find that the landlord had cause to issue the notice to end tenancy, and the tenant's application to cancel the notice to end tenancy is dismissed. I grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

Dispute Additional Rent Increase

The tenant further testified that the tenant had to move out and back into the rental unit. The tenant first moved in on July 13, 2012 but moved out on August 4 to August 7, 2012; again moved out October 6 and back in on October 10, 2012; and the rent was reduced by $50.00 per day. A copy of the tenancy agreement signed by the parties on June 16, 2012 contains an addendum which states: "15 Calendar is attached which shows dates suite is rented. Tenant agrees to move out for those dates removing all personal items and food. Landlord agrees to clean the suite after these rentals before tenant moves back."

The tenant stated she had to sign a post-dated tenancy agreement In November, 2012 for $200.00 more per month commencing July 1, 2013. The alternative would have been to move out for three months during the summer and return at the same rent, or not return. The tenant agreed to the new fixed term at the increased rent so that she would not have to deal with the stress of moving again for more than a year.

The landlord did not dispute that testimony, and testified that the rental unit is rented out in the summer months for higher rent and the first fixed term tenancy agreement specified dates that the rental unit was already rented for. The tenant agreed to move

out for those dates and was given a reduced rent. The fixed term was to expire on June 30, 2013, and the landlord made the offer to give the tenant an opportunity to remain in the rental unit, albeit for the increased rent. The tenant agreed, the parties negotiated a new contract in November, 2012 so that it would be in place for the summer.

Analysis

The *Residential Tenancy Act* states that:

> 43 (1) A landlord may impose a rent increase only up to the amount
>
> (a) calculated in accordance with the regulations,
>
> (b) ordered by the director on an application under subsection (3), or
>
> (c) agreed to by the tenant in writing.
>
> (2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

In this case, I find that the tenant agreed to the increase in writing. The tenant already had a fixed term to expire at the end of June, 2013 when she agreed to the new term in November, 2012. The tenant stated that she did not want to deal with the stress of moving out, so agreed to the increased rent. Therefore, the tenant's application disputing an additional rent increase is hereby dismissed without leave to reapply.

Tenant's Application for a Monetary Order and to Reduce Rent

The tenant testified that a gravel pit sits on the property, and the landlord wanted to put rocks and bushes to create an area for the rental unit, but the landlord put them elsewhere. The parties tried to find solutions for privacy on the rental property. The landlord asked the tenant to draw up plans showing where bushes, etc. would be placed, which she did, but the landlord would not permit the tenant to plant the bushes she purchased.

Further, the landlord agreed to install venting in the rental unit but changed his mind stating in an email he wouldn't do it until the lease had expired. The landlord was also advised by the tenant that the washer and dryer in the rental unit chew up her clothing. The clothes get caught on something, and her duvet was shredded. The landlord also promised to provide new countertops and tiles, and the tenant wanted the landlord to address multiple things, but he had multiple excuses. Numerous emails exchanged by the parties have been provided. During cross examination, the tenant agreed that the parties discussed having the countertops replaced but the tenant told the landlord that it was not important if it didn't get finished. The tenant wanted the landlord to complete all

the repairs to the cooling, heating, countertops, tiles, etc. at one time rather than multiple repair visits.

The tenant further testified that the water comes from an eco-friendly system, but the tenant doesn't trust it. The tenant has not had the water tested, but testified that it gets dirty when the power goes out.

With respect to loss of quiet enjoyment, the tenant testified that from July, 2013 to present date, there have been disturbances. Tenants in the old house on the property have constant parties. When the tenant complained to the landlord, he said that he would passively aggressively get rid of them but didn't until August.

The landlord does not tell guests to not use the tenant's private drive. The tenant has been disturbed with people attending on the rental property and parking in the tenant's area blocking the tenant's vehicle. The tenant expected a rental unit with no interruptions, not having the landlord's dog on the rental property, people roaming on the rental property even after talking to the landlord about it, and having people attend at the tenant's door. The way it's situated, the landlord's guests can see in the tenant's bathroom. The tenant further testified that guests of other tenants on the property had damaged the tenant's car in a previous tenancy. The tenant told the landlord that they could not be near the tenant's rental property or vehicle. The landlord told the tenant to put it in writing, and the tenant did so, threatening to move out.

With respect to the tenant's application for a reduced rent for repairs, services or facilities agreed upon but not provided, the tenant testified that the landlord promised to have gates installed on the rental property, and the addendum to both tenancy agreements states: "3 We are having new gates installed in the main driveway. Gates will be closed at night. If gates are closed, please close after you go through them." The tenant stated that she wants the gates installed for security reasons; the rental property is on a highway. There have been instances when people have driven up the tenant's driveway after dark when the gates should have been closed.

The tenant has provided a monetary order worksheet claiming:

- $104.00 for privacy plants and bushes;
- $200.00 for drinking water;
- $60.00 for 3 privacy plants;
- $1,800.00 for loss of quiet enjoyment and overpayment of rent for 9 months;
- $2,800.00 for services and facilities agreed upon but not provided from July, 2012 to March, 2014; and
- $35.00 for cleaning debris left by the landlord after making repairs to the rental unit.

The tenant's witness testified that he was present and observed other tenants on the property and their guests party for 3 days straight, day and night. The witness was at the rental unit visiting the tenant 4 to 6 times per week from June to August, 2013 and for part of September, and there were parties just about every night and people coming and going till 5:00 a.m. When the landlord was told, he just shrugged it off. The witness also observed a bus and a car belonging to the guests of other tenants blocking the tenant's driveway on 2 occasions. The landlord dealt with it right away on one of those occasions.

The witness further testified that the rental unit was advertised as private, but it's not. Copies of advertisements have been provided which advertise the rental unit as private vacation accommodation. The landlord has the rocks to place on the rental property to assist with the lack of privacy but the landlord hasn't placed them.

Also, the rental unit has central air conditioning but it doesn't work. In the summer time, the heat inside the rental unit is unbearable most of the time. Also, the witness has not been able to access Wi-Fi while at the rental unit.

The landlord agrees that additional venting in the rental unit would be a good idea however the heat and air conditioning is not a forced air unit and doesn't work as efficiently. When it's 25 degrees outside, the unit keeps the rental unit 20 degrees inside; it's always a 5 degree difference. There are alternate heat sources, and the tenant has a thermostat. The landlord's unit is where the switch is located to turn the system from summer to winter. The landlord had told the tenant that the system could be accessed over the internet by service personnel, and another company does repairs on heat pumps. A new heat pump was installed just before or after the tenancy began and the landlord has had it repaired 3 times in 9 months. When it's not working, the landlord's unit gets cold just like the rental unit.

The landlord also agrees that he did some work in the rental unit and may have left tools there and perhaps some gyprock dust but the tenant was so hostile, he left as soon as he could, stating that he couldn't get out of there fast enough.

Analysis

Firstly, having dismissed the tenant's application disputing an additional rent increase, I also dismiss the tenant's application for recovery of $1,800.00 for over-payment of rent. I acknowledge that the tenant's claim in this regard is that the tenant ought not to have paid the increase in rent because the tenant did not feel she was being provided with

reasonable privacy free from disturbances. However, they are 2 very different issues. Having found that the increase was in accordance with the *Act,* the tenant's application cannot succeed.

With respect to privacy bushes, the tenant has provided one Interac receipt in the amount of $104.00 that does not specify what it's for. The tenant also claims another $60.00, but has provided no evidence of that cost. Further, I am not satisfied that the tenant has proven that the landlord should reimburse the costs. I have no evidence of where they are, whether or not the tenant planted them elsewhere, or whether or not the landlord agreed to reimburse the tenant. The tenant's written material states that the landlord agreed in an email dated April 6, 2013 but has not provided a copy. Therefore, the tenant's application for recovery of those costs cannot succeed.

The tenant also claims $200.00 for drinking water and testified that when the power goes out, the water is dirty. The tenant doesn't trust it but has not had it tested. The tenant also has not provided any evidence of having purchased drinking water, and the tenant's application in this regard is hereby dismissed.

With respect to loss of quiet enjoyment and the landlord's failure to have gates installed, I accept that both tenancy agreements contemplate gates, and I accept that the tenant expected them to be installed. Although the advertisements provided are for a vacation rental, I accept that reasonable privacy was a material term of the tenancy as far as the tenant was concerned. A material term of a tenancy is a term that is so important to one party or the other that the contract would not have been made if the term was not a part of the contract. I also accept that the tenant was disturbed by other tenants partying on the property, blocking the tenant's driveway, and the landlord's lack of concern for the landlord's guests attending the rental unit. The *Act* requires a landlord to provide a rental unit free from unreasonable disturbances, and if a party fails to comply with the *Act* or the tenancy agreement, the party who commits the breach may be ordered to compensate the other party for the breach. In determining quantum, I must consider the frequency of disturbances and the level of discomfort to the tenant by not having the gates. The tenant claims $2,800.00 for July, 2012 through March, 2014, or 20 ½ months, which I find equates to about $140.00 per month for the entire tenancy. I also find that a portion of the rent should be awarded to the tenant according to the amount of rent paid. The tenant paid $1,200.00 per month for the first year of the tenancy and $1,400.00 per month from July 1, 2013 to present. I also find that the tenant should have found it reasonable for the landlord to have the gates installed by the end of September, 2012. The testimony is that the neighbouring disturbances commenced in May, 2013. The tenant has claimed 10% of the $1,400.00 for each month throughout the tenancy, and I find that the tenant has established 10%, which

equates to $120.00 per month from October, 2012 to June, 2013 and $140.00 per month for July 1, 2013 to present. [($120.00 X 9 = $1,080.00) + ($140.00 X 9 = $1,260.00) = $2,340.00.]

With respect to the tenant's claim of $35.00 for cleaning debris after the landlord made repairs to the rental unit, the *Act* requires a person who makes a claim to do whatever is reasonable to mitigate the loss or damage suffered. In this case, the landlord did not deny leaving dust in the rental unit, but also testified that he couldn't get out of there fast enough because of the tenant's hostile behaviour. The tenant didn't deny that either and I find that had the tenant behaved in a more civil manner, the landlord may have stayed to clean up. The tenant's application for $35.00 is hereby dismissed.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee from the other.

Conclusion

For the reasons set out above, the tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

The tenant's application disputing an additional rent increase is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,340.00.

These orders are final and binding and may be enforced.

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: April 09, 2014

Residential Tenancy Branch