



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: CNC, MNDC, OLC, LRE, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end the tenancy, a monetary order, an order that the landlord comply with the Act and an order setting conditions on the landlord's right to enter the rental unit. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue(s) to be Decided

The issues to be decided are whether the Residential Tenancy Branch has jurisdiction to hear this matter, whether the notice to end tenancy is valid, whether the landlord should be ordered to comply with the Act and whether the landlord should have conditions set on her right to enter the rental unit.

Background and Evidence

The tenancy began in early June 2008. The rental unit consists of a single bedroom and access to common areas which include a kitchen and a bathroom. The landlord testified that she owns the residential property and while she has not lived in the building since 2002, she has reserved a bedroom for her own use which has on occasion been rented to other tenants. The landlord further testified that she has been working on the building, which I take to mean is performing repairs and renovations, and that she on occasion uses the bathroom which the tenant also uses.

The parties agreed that the landlord gave the tenant verbal notice that she needed to vacate the rental unit and that on July 31 the tenant was given a letter advising that she

must vacate the rental unit. It is this letter which the tenant seeks to dispute. The parties further agreed that in early August the landlord packed the tenant's belongings and left them in the residential property. The parties further agreed that the police attended and advised the landlord that she could not enter the rental unit or pack the belongings and should not take further action against the tenant until after she had received the results of this hearing. There is no suggestion that problems have existed since the advice of the police was given and followed.

The landlord took the position that because she occasionally uses the bathroom in the residential property and because the tenant is only renting a single room, the Act does not apply to this tenancy. The landlord testified that she has always understood that the tenant was her roommate and that because she was of the opinion that the Act did not apply to the tenancy, she did not use a notice to end tenancy pursuant to the Act and has not observed the requirements of the Act with respect to entry into the rental unit.

The tenant seeks orders that the landlord comply with the Act with respect to ending the tenancy and refraining from entering the tenant's bedroom without providing 24 hours written notice. The tenant further seeks an order for the return of \$1,800.00 in rent, which represents three months of rent, claiming that the landlord's attempt to evict her without proper notice and packing of her belongings has resulted in stress and discomfort.

Analysis

With respect to the issue of jurisdiction, section 4(c) of the Act provides that the Act does not apply to tenancies in which the tenant shares a kitchen or a bathroom with the owner of the rental unit.

It states in *Sullivan and Driedger on the Constructions of Statutes*, 4th ed., Butterworths Canada Ltd., 2002, at pp. 235-236:

... As Mr. Justice O'Halloran explained in *Waugh v. Pedneault*:
The Legislature cannot be presumed to act unreasonably or unjustly, for that would be acting against the public interest. The members of the Legislature are elected by the people to protect the public interest, and

that means acting fairly and justly in all circumstances. Words used in enactments of the Legislature must be construed upon that premise. That is the real “intent” of the Legislature. That is why words in an Act of the Legislature are not restricted to what are sometimes called their “ordinary” or “literal” meaning, but are extended flexibly to include the most reasonable meaning which can be extracted from the purpose and object of what is sought to be accomplished by the statute.

I find that the intent of the legislature in section 4(c) was not to permit landlords to escape their obligations under the Act by reserving use of a kitchen or bathroom, but to address true roommate situations in which landlords and tenants are living in the same residential property resulting in the landlord’s personal life being profoundly impacted by the tenancy on a daily basis. This is clearly not the case in this situation. The landlord is in the residential property on occasion, but usually uses an upstairs bathroom while she is working on the property. The landlord has not lived in the residential property for some 6 years and while a bedroom has occasionally been available for her, there were times in which the landlord could not have lived in the property because even that bedroom had been rented out. While a literal reading of the Act would exclude the jurisdiction of the Act, I find that the most reasonable interpretation of the Act in light of what I believe to be the intent of the legislation is that the Act is meant to apply in this situation. I find that the tenancy falls under the jurisdiction of the Act.

Under the Act, landlords are required to give notice to end the tenancy in the proper form. I find that the landlord failed to give notice in the proper form and accordingly find that the notice is invalid and ineffective to end the tenancy.

I find that an order that the landlord comply with the Act and an order restricting the landlord’s right to enter the rental unit are not required. I am satisfied that the landlord is fully aware of her obligations under the Act and accept that she has acted in the manner which she has because she was under the impression that she was outside the jurisdiction of the Act. I have every expectation that the landlord will observe her obligations under the Act now that she knows this tenancy is captured by the Act.

As for the tenant’s request for a monetary order, I find that the tenant has failed to prove that she has suffered a compensable loss as a result of the landlord’s actions. Further, the tenant acknowledged that the only grievances with the landlord occurred over a

period of a few weeks and I find it unreasonable to award the tenant the return of three months rent for a problem that was so short in duration.

Conclusion

As I have found that the notice is invalid, the tenancy will continue. The remainder of the tenant's claims is dismissed. The tenant is entitled to recover the \$50.00 filing fee paid to bring this application and may deduct this sum from future rent owed to the landlord.

Dated September 05, 2008.