



Dispute Resolution Services

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

Decision

Dispute Codes: AS CNC LRE MNDC OLC

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss, an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)*, an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and an Order authorizing the Tenant to change the locks on her rental unit.

It was not clear on the Tenant's Application for Dispute Resolution if she was also seeking to cancel a Notice to End Tenancy for Cause, due to the fact that this item was not clearly selected on the application form. At the beginning of the hearing the Tenant stated that she had not applied to cancel a Notice to End Tenancy, however during the hearing she stated that she did apply to cancel a Notice to End Tenancy.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to a monetary order of \$100.00 as compensation for jeopardizing the Tenant's personal safety and the security of her personal belongings; whether the Landlord's access to the rental unit should be restricted; and whether a Notice to End Tenancy should be set aside

Background and Evidence

Neither the Landlord nor the Tenant recalled when this tenancy began, although they both believe it was in the Spring or the Summer of 2008. The Tenant has exclusive possession of her bedroom and she shares a common kitchen and bathroom with other tenants. There were Tenants sharing the common areas at the beginning of the tenancy although there is nobody currently sharing those areas, as the Landlord has been unable to find new tenants. The Landlord and the Tenant agree that the Tenant is required to pay monthly rent of \$600.00.

This tenancy was the subject of a dispute resolution hearing on September 03, 2008, in which Dispute Resolution Officer A, rendered a decision. At that hearing Ms. A determined that the tenancy falls under the jurisdiction of the *Act*; that there is no need for an Order requiring the Landlord to comply with the *Act* now that the Landlord understands that this tenancy is governed by the *Act*; and that there is no need for an Order restricting the Landlord's access to the rental unit now that the Landlord understands that she must comply with the *Act* when accessing the rental unit.

Ms. A further determined that the verbal notice to end the tenancy that was given by the Landlord and the written letter to end the tenancy that was given by the Landlord on July 31, 2008 were not valid, and she granted the Tenant's application to set aside those notices to end tenancy. Finally, Ms. A determined that the Tenant is not entitled

to monetary compensation for the incident in August when the Landlord packed the Tenant's personal belongings.

It is unclear which notice to end tenancy the Tenant is seeking to set aside, as the evidence she presented in this regard was disjointed and incomplete. She stated that she wished to set aside the notice to end tenancy that was given verbally by her Landlord, as well as written notice served to her by her "worker". She did not submit a copy of the notice to end tenancy that she wished to have set aside, nor was she able to provide any details regarding the date that she received the notice to end tenancy that she was disputing or the date that the notice to end tenancy required her to vacate the rental unit.

The Landlord stated that she served the Tenant with an outdated notice to end tenancy on November 05, 2008. She stated that she subsequently served the Tenant with a notice to end tenancy on November 27, 2008. She stated that she received an Order of Possession for the rental unit for December 31, 2008, on the strength of the notice to end tenancy that she served on November 27, 2008. The Landlord did not submit a copy of the Order of Possession or the decision relating to the Order of Possession.

Residential Tenancy Branch records show that this tenancy was the subject of another dispute resolution hearing on December 08, 2008, which related to the Tenant's application to set aside a Notice to End Tenancy. The record shows the Dispute Resolution Officer who presided at that hearing dismissed the Landlord's application to set aside a Notice to End Tenancy, and granted the Landlord an Order of Possession for December 31, 2008.

The Tenant applied for authorization to change the lock on her rental unit and for an Order setting conditions on the Landlord's right to enter the rental unit, as she contends that the Landlord has accessed her rental unit on many occasions without lawful

authority. The Tenant stated that on or about October 15, 2008, the Landlord left a note on the fridge cautioning her about restricting access to the common kitchen and bathroom. The Landlord agreed that she left a note on the fridge but she contends that she has access to this area as it is intended to be a common area that is shared by any tenants living in the rental unit.

The Tenant stated that the Landlord accessed the rental unit to replace a carpet in a bedroom in the rental unit, although she was not certain of the date this occurred. The Landlord agreed that she did replace the carpet in one of the bedrooms in the rental unit, however she contends that this is a bedroom that would be rented to another occupant if she was able to find someone willing to move into the rental unit. She stated that this bedroom is not a common area that the Tenant has authority to access.

The Tenant stated that she believes the Landlord entered her rental unit sometime in August of 2008 and placed poison in her water bottle. She stated that she reported the incident to the police. The Tenant submitted a police report that established that she did report the incident to the police, however she submitted no evidence to establish that her suspicions are accurate. In the police report the Tenant indicated that she can smell the poison in the bottle but she did not ingest enough to require medical treatment. The Landlord denied poisoning the Tenant's water.

The Tenant repeatedly attempted to refer to an incident in September when the Landlord entered the portion of the rental unit over which the Tenant has exclusive possession and packed her personal belongings. The Tenant was repeatedly advised that this incident could not be discussed at this hearing as it was an issue that was the subject of a previous dispute resolution hearing on September 05, 2008, and could not be addressed at this hearing.

The Tenant contends that the Landlord entered her rental unit without lawful authority on four or five occasions, however her testimony regarding the entries was disjointed and incomplete. Apart from the above mentioned instances, she was unable to provide specific details regarding unlawful entries. The Landlord stated that she has not entered the portion of the rental unit that is exclusively occupied by the Tenant since she was advised not to enter that area by Ms. A on September 05, 2008.

The Tenant is seeking compensation, in the amount of \$100.00, for the stress the Landlord caused to her when she unlawfully entered her rental unit and when she poisoned her water.

The Tenant repeatedly attempted to discuss repairs that she believes must be made to the rental unit. She was repeatedly advised that she did not make an application for an Order requiring the Landlord to make repairs to the rental unit, and that the issue could not be addressed at this hearing. After explaining this to the Tenant on three occasions, she was advised that the hearing was being concluded without further discussion of repairs to the rental unit.

Analysis

I find that the Tenant submitted insufficient evidence to establish that she received a Notice to End Tenancy other than the ones that have been the subject of dispute resolution hearings on September 03, 2008 and December 08, 2008. As those matters have been previously determined at different dispute resolution hearings, they are not matters that I can now consider. As the Tenant has not established that she received a notice to end tenancy that has not been the subject of a dispute resolution hearing, I hereby dismiss her application to set aside a notice to end tenancy.

I note that Mr. B, a Dispute Resolution Officer, determined on December 08, 2008 that this tenancy is ending on December 31, 2008, and that he granted the Landlord an Order of Possession for that date. I find any further application to set aside any other notices to end this tenancy is moot, since the tenancy will be ending on December 31, 2008.

The evidence shows that the Tenant only has exclusive use of her bedroom, and that the kitchen and bathroom are to be shared with other tenants when other bedrooms in the rental unit are rented. As the Tenant does not have exclusive use of the kitchen area, I find that the Landlord did not contravene the Act when she entered the kitchen for the purposes of leaving a note on the fridge. As the Tenant does not have the right to enter the bedroom in the rental unit that was recently carpeted, I find that the Landlord did not contravene the Act when she entered that bedroom for the purposes of installing carpet.

I find that the Tenant submitted insufficient evidence to establish that the Landlord entered the portion of the rental unit over which the Tenant has exclusive possession to poison her water or for any other purpose after September 05, 2008, when she was advised by Ms. A that she must comply with the Act when entering this portion of the rental unit.

Conclusion

As I find that the Tenant has not established that the Landlord has unlawfully entered the portion of the rental unit over which the Tenant has exclusive possession, I hereby dismiss the Tenant's application for an Order restricting the Landlord's access to this area and I dismiss the Tenant's application for authority to change the locks to the rental unit. I also dismiss the Tenant's application for financial compensation in regards to any of the allegations made by the Tenant.

Dated: December 30, 2008