



Dispute Resolution Services

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

DECISION

Dispute Codes: CNL, AAT, RR, & FF

Introduction:

This hearing dealt with an application by the tenant disputing a two month Notice to End Tenancy for landlord's use of the rental unit. The tenant also is seeking a request for a rent reduction related to disturbances during repairs completed by the landlord and a request to set conditions on the landlord's access to enter the rental unit. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Should the two month Notice to End Tenancy be set aside? Is the tenant entitled to a rent reduction due to repairs completed by the tenant? Is there evidence to place restrictions on the landlord's right to access the rental unit?

Background and Evidence:

This tenancy began on August 1, 2008 for the monthly rent of \$675.00 and a security deposit of \$340.00. On November 26, 2008 the tenant was served with a two month Notice to End Tenancy for landlord's use of the rental unit.

The dispute was largely about repairs that the landlord completed over the period of a month and a half in October and November 2008. The tenant alleged that during the repairs she lost access to and from the rental unit, was endangered by equipment in the hallways and that the landlord entered the rental unit without proper notice. The tenant was unable to provide any specific dates when the alleged disturbances occurred.

The landlord stated that he was painting the interior of the rental building including repairs to the walls and ceilings of all three levels. He completed the work in stages throughout the month and a half. He acknowledged that while he was working there were times that he had equipment in the hallways which would have made it inconvenient to navigate the hallways but denies that the tenant's access was ever blocked. The landlord indicated that at time one or the other of the two entrances would have been temporarily blocked, but never at the same time. The tenant always had access through one of the two entrances. The landlord also denied entry to the tenant's unit without authorization. There appears to have been one instance when the landlord briefly accessed the tenant's rental unit, with permission, to use the electrical breaker in the tenant's rental unit.

The landlord also submitted that he intends to occupy the rental unit because he has no suitable place to live. The landlord was residing in a trailer; however, it is not winterized and is not suitable in the winter months. He is currently residing in an office or storage space until the rental unit becomes available. The landlord stated that he served notice for this rental unit because when he occupies it will be the least loss in rental revenue. The landlord requested an Order of Possession for the effective date of the two month Notice to End Tenancy.

Analysis:

During the hearing I clarified that the two month Notice to End Tenancy is not related to a rent subsidy. The issue is whether the landlord intends to occupy the tenant's rental unit for his own use pursuant to section 49 of the *Act*. The tenant has not provided any evidence to suggest that the landlord served this notice for other motives. There is no evidence before me that the landlord is acting in bad faith and I accept that the landlord intends to occupy the rental unit for his own use consistent with the legislation. On this basis I grant the landlord's request for an Order of Possession effective **January 31, 2009 at 1:00 p.m.**

During the hearing it became apparent that the tenant is seeking compensation for loss of quiet enjoyment due to inconvenience and disturbances experienced while the landlord was working the rental building. However, the tenant did not file an application for compensation; rather she filed an application seeking a rent reduction due to repairs or services that were not provided after agreed to. The tenant's complaint also is respecting loss of access to the rental unit and unauthorized access to her rental unit.

The tenant was unable to provide evidence in support of her allegations. Although I can certainly accept that the landlord's work cause inconveniences, I am not satisfied that the tenant was disturbed or disrupted to the extent she portrayed in the hearing. The tenant was unable to provide me with any specific dates or lengths of time that she was severely disruptive. I also did not accept the tenant's evidence that she lost access to the rental unit. I accept the evidence of the landlord that while one or the other of the entrances may have been blocked, the tenant always had access through the other entrance. While this may have been an inconvenience, it was a minor inconvenience.

There must be a balance struck between a tenant's right to quiet enjoyment of a rental unit and the landlord's right and obligation to repair and maintain the rental unit and/or building. In the circumstances before me I note that all of the work completed was outside of the rental unit and the disruption the tenant experienced was outside of her rental unit. However, I am not satisfied based on the evidence before me that the tenant lost access to the rental unit or that she suffered anything more than minor inconvenience due to the landlord's work in the rental building. I also find that the evidence does not support the conclusion that there should be any conditions or restrictions set on the landlord's right to access the tenant's rental unit.

Conclusion:

I dismiss the tenant's application. I have determined that the two month Notice to End Tenancy for landlord's use is valid and I have upheld the notice. I have granted the landlord an Order of Possession for the effective date of the notice. I also deny the tenant's application for a rent reduction and for conditions or restrictions to be placed on the landlord's right to access her rental unit.

Dated December 23, 2008.

Dispute Resolution Officer