



Dispute Resolution Services

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

Decision

Dispute Codes: OPC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an order of possession, a monetary order for retention of the security deposit and recovery of the filing fee. The landlord's agent, the tenant's agent and the advocate for the tenant all participated in the hearing and gave affirmed testimony.

Issues to be Decided

- Whether the landlord is entitled to an order of possession
- Whether the landlord is entitled to a monetary order under the *Act*

Background and Evidence

There is evidently no written residential tenancy agreement in place for this tenancy which began in November 2006. The original tenants were the current tenant and her now deceased husband. The current tenant is a wheelchair bound quadriplegic. Since early November 2008, the tenant's son and his wife have been living with the tenant in order to provide assistance with daily living.

While the tenant's agent stated that there has been a longstanding disagreement with the landlord's agent as to the correct amount of the monthly rent, the landlord's 1 month notice to end tenancy for cause makes no reference to rent as grounds for seeking an order of possession. The landlord's agent also testified that in spite of information about rent which he provided on his application for dispute resolution, he is seeking an order of possession based on cause.

The landlord submitted into evidence a copy of the 1 month notice dated November 28, 2008 which he stated was served in person on the tenant at her front door that same day. The tenant's agent and advocate both stated they have not seen the original notice, currently have no copy of it, and they dispute that the landlord's agent ever actually served the notice on the tenant.

Reasons noted on the notice for its issuance are as follows:

Tenant has allowed an unreasonable number of occupants in the unit / site

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The landlord's agent said he does not reside in the building where the subject unit is located, although he stated that there is a resident caretaker on site. He said that the landlord's concerns are not with the tenant herself but with the conduct and the comings and goings of those she allows in her unit. He said he considers that others are unfairly taking advantage of the tenant. The landlord's agent provided no documentary evidence or witness testimony to support any of the reasons set out, as above. The tenant's agent denied that any of the problems identified by the landlord's agent are in any way connected with either him or his wife or anyone else who may otherwise be present at the tenant's unit.

Analysis

Section 47 of the *Act* speaks to **Landlord's notice: cause**.

The burden of proof is on the party making the claim. When one party provides evidence to support facts in one way, and the other party provides equally probable evidence to support facts another way, the party making the claim has not met the burden of proof on a balance of probabilities and the claim fails.

In the circumstances of this case, even if I accept that the 1 month notice was indeed served on the tenant, after considering all the documentary evidence and testimony, I find on a balance of probabilities that the landlord has not met the burden of proof where it concerns cause. Simply stated, there is insufficient evidence provided by the landlord upon which to issue an order of possession.

As for the landlord's monetary claim, as earlier stated, during the hearing the landlord's agent testified that rent does not comprise any aspect of the landlord's application. In the result, I find there are no grounds upon which to issue a monetary order.

Conclusion

I hereby set aside the landlord's 1 month notice to end tenancy for cause. The tenancy therefore continues in full force and effect. Further, I dismiss the landlord's application for a monetary order including recovery of the filing fee.

DATE: February 9, 2009

Dispute Resolution Officer