

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Interim Decision

Dispute Codes:

FE, OLC, ERP, RP, PSE, MNDC, CNC

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Tenant’s application:

- to cancel a One Month Notice to End Tenancy for Cause;
- for a Monetary Order for compensation for loss under the Act;
- for an order that the Landlord comply with the Act;
- for an order that the Landlord make emergency repairs;
- for an order that the Landlord provide services or facilities required by law; and
- to recover the filing fee from the Landlord for the cost of filing the application.

The issues to be decided are:

1. Is the Tenant SH a tenant or an occupant?
2. Should the Notice to End Tenancy for Cause be cancelled?
3. Are the Tenants entitled to a monetary order for loss of use of facilities and services?
4. Should any orders be made with respect to the Landlord complying with the Act, making emergency repairs, making ordinary repairs or providing services or facilities?

Preliminary Matter

We began this hearing and focused on the one month Notice to End Tenancy for cause, as we were unable to address all of the issues in the time allotted for the Hearing. I have made a determination on the Tenants' application to cancel the Notice to End Tenancy, and adjourn the remainder of the Tenants' application to be heard at a date to be advised.

Background and Evidence

The parties agreed on the following facts:

- Rent for the rental unit is \$860.71 per month, due on the first day of the month.
- The Tenant KL paid the Landlord a security deposit in the amount of \$420.00 on January 23, 2006.
- The Tenant KL moved in to the rental unit on February 1, 2006.
- The Tenant served the Landlord with the Notice of Hearing package by registered mail on February 2, 2009.

Tenant's evidence

The Tenant testified that the Landlord wrote to the Tenant KL on January 13, 2009. In the letter, the Landlord:

- advised that the Landlord did not consider the Tenant SH to be a tenant under the Tenancy Agreement,
- asked the Tenant KL to remove the Tenant SH from the rental unit by the end of January, 2009.
- stated that failure to remove the Tenant SH from the rental unit by the end of January would be result in an eviction notice.

The Tenant testified that the Landlord issued a One Month Notice to End Tenancy for Cause on January 21, 2009. The reason given for issuing the Notice to End Tenancy was for breach of a material term of the Tenancy Agreement.

The Tenant provided the following evidence and testimony:

- She moved in to the rental unit at the end of December, 2007.
- She wrote to the Landlord's property manager on January 16, 2008, introducing herself and enquiring about being added to the written tenancy agreement as a tenant, and making some suggestions regarding the up-coming elevator repairs.
- The Landlord's property manager responded to her suggestions about the elevator repairs, but did not address her question about being added to the tenancy agreement.
- On March 17, 2008, there were a series of e-mails between the Landlord's property manager and the Tenant SH. The Landlord's property manager wrote to the Tenant SH asking her about the Tenants' dog, and advising that there would be a revised tenancy agreement and that a pet deposit would be required. The Tenant SH responded to the Landlord, stating that the Tenants were happy to pay a pet deposit and asking for a revised tenancy agreement. The Landlord's agent replied in turn, stating that she would slip a copy of the revised agreement through the Tenants' door the following day. The Tenant testified that no revised agreement has ever been received by the Tenants.

The Tenant provided further evidence of numerous e-mails back and forth between the Tenant SH and the Landlord's property manager, dated: March 5, 2008; March 6, 2008; April 10, 2008; April 21, 2008; August 11, 2008; August 14, 2008; October 17; and October 19, 2008. These e-mails dealt with landlord/tenant issues such as: replacement of a toilet seat, and the Tenant SH deducting the cost from the next month's rent; a broken patio door; and a visit from pest control.

The Tenant stated that all communications with the Landlord regarding the rental unit were done by her. The Tenant testified that the Landlord did not question her status as a tenant until the Tenants sent the Landlord a letter requesting compensation for loss of facilities and services.

Landlord's evidence

The Landlord's agent testified that she never accepted the Tenant SH as a tenant. The Landlord's agent testified that she manages 63 apartments in the building and that "small details" get lost in the day-to-day operations. The Landlord's agent testified that she was unaware that the Tenant SH was not on the lease until shortly before she issued the Notice to End Tenancy.

The president of the company (Landlord) stated that the Tenant SH had requested to be put on the lease as a tenant after she had already moved in and that this was contrary to paragraph 10 of the tenancy agreement, which was a material term of the tenancy agreement. The president of the company further stated that if the Tenant SH were to be made a tenant under the lease, the Landlord would ask for more rent because of the additional wear and tear on the building and the elevator. The president said that there was no personal vendetta against the Tenants and that the issuance of the Notice to End Tenancy had nothing to do with the Tenants' monetary claim against the Landlord.

Analysis

The Act defines a tenancy agreement as follows:

Definitions

1 In this Act:

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting

possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Based on the evidence and testimony of the parties, I find that there was a landlord/tenant relationship between the Landlord and the Tenant SH, and that the Tenant SH is a tenant and not an occupant.

I therefore grant the Tenants' application to cancel the One Month Notice to End Tenancy for Cause issued on January 21, 2009. The tenancy remains in full force and effect.

Conclusion

The One Month Notice to End Tenancy for Cause issued on January 21, 2009 is cancelled. The remainder of the Tenants' application is adjourned to a date to be advised. The parties will receive a Notice to Reconvene in due course.

March 11, 2009
