

Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes: CLC, MNDC, OLC, RPP, FF

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.

Both parties attended at the Hearing, and gave affirmed testimony. The Hearing proceeded on its merits.

Issues to be Decided

This is the Tenant’s application for the following:

1. to cancel a One Month Notice to End Tenancy for Cause;
2. for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement;
3. for an Order that the Landlord comply with the Act;
4. for an Order that the Landlord return the Tenant’s personal property; and
5. to recover the filing fee for the cost of the Application from the Landlord.

Background and Evidence

The Tenant testified that he served the Landlord with the Notice of Hearing Documents by leaving a copy with an agent of the Landlord at the Landlord’s office, on April 26, 2009, at 11:00 a.m.

The parties agreed on the following facts:

The Tenancy started on April 7, 2009. The monthly rent is \$750.00 per month, due on the first day of each month. The Tenant paid the Landlord \$600.00 for prorated rent for the month of April, 2009. The Tenant paid a security deposit to the Landlord in the amount of \$375.00 on April 7, 2004.

Tenant's testimony and evidence

The Tenant testified that he was not provided with a key or an access code to the rental unit. However, on April 7, 2009, the doors to the rental unit were open and he left some items there, including some kitchen products and some jackets. The Tenant testified that he bought a new bed which was delivered by the furniture store on April 7, 2009, while the Tenant was not at the rental unit.

The Tenant testified that he returned to the rental unit on April 8, 2009, and discovered there were some people in his rental unit who were not known to him. The Tenant immediately went to see the Landlord's agent to give the Landlord's agent a notice of cancellation of contract, but the agent was not in the office because it was very early in the morning, so the Tenant left the Notice at the office and left the building.

The Tenant testified that on April 18, 2009, he provided the Landlord's agent with another copy of the notice of cancellation of contract dated April 8, 2009 (copy provided into evidence), cancelling the lease because of lack of neighbour cleanliness.

Contained in the notice of cancellation was a demand that the Landlord return any unused rent and the security deposit to the Tenant at a given address. On the bottom of the notice of cancellation was a hand written note, which read "Please: There was some occupancy (unauthorized) last night. No one to go in without my permission".

The Tenant stated that the Landlord was not cooperative with his demand for return of the rent and security deposit.

The Tenant testified that he returned to the rental unit with a moving van on May 19th, to remove some items from the rental unit. While he was there, he noticed there were dirty dishes, soiled clothing, cigarette butts and drug paraphernalia in the rental unit, which did not belong to him.

The Tenant testified that his bed is still at the rental unit.

Landlord's agent's testimony and evidence

The Landlord provided a copy of the Pre-approval Application form, Rental Application check, Offer to Lease and Tenancy Agreement.

The Landlord's agent testified that the co-tenant was provided with a key to the rental unit on April 7, 2009, in the presence of the Tenant.

The Landlord's agent stated that the Landlord had received the Tenant's Notice of Cancellation on April 8, 2009 and again on April 18, 2009. After receiving the Tenant's Notice of Cancellation on April 8, 2009, the Landlord's agent asked the co-tenant if she was moving out of the rental unit and she stated that she was not. The co-tenant was still in the rental unit on April 12, 2009, and came to the Landlord's agent requesting a spare key, which she returned a short time later.

The Landlord's agent testified that on April 18, 2009, the Tenant complained to the Landlord's agent that there was a man with a dog in the rental unit. The Landlord's agent and the Tenant attended at the rental unit and knocked on the door. The Landlord's agent attempted to gain entrance to the unit, but someone was blocking the door. Eventually, the co-tenant opened the door and allowed the Tenant inside.

The Landlord's agent testified that rent has not been paid for the months of May and June, and that the Landlord issued a Notice to End Tenancy on May 4, 2009. The

Landlord has recently filed an Application for Dispute Resolution and is waiting to receive the Notice of Hearing documents for its Application.

Tenant's response to the Landlord's agent's testimony

The Tenant testified that the co-tenant is not of the age of majority. The Tenant testified that he made it clear to the Landlord that there were to be no people allowed in the rental unit unless they were authorized to be there by the Tenant. The Tenant stated that the Landlord's evidence was misleading, and that the tenancy agreement was a frustrated contract and therefore null and void.

Analysis

Application to cancel Notice to End Tenancy for Cause

There was no Notice to End Tenancy for Cause issued to the Tenant by the Landlord. Therefore, the Tenant's application to cancel the Notice to End Tenancy for Cause is dismissed.

Application for a Monetary Order

The Tenant stated that he believed the Tenancy Agreement was frustrated and therefore the parties to the contract are relieved from fulfilling their obligations under the contract (Tenancy Agreement) and he is entitled to return of rent and the security deposit paid to the Landlord.

A contract is frustrated where, *without the fault of either party*, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. An example of frustration would be if the rental unit were destroyed by an earthquake or flood. I do not find that this Tenancy Agreement was frustrated.

The Tenant's Application for Dispute Resolution discloses a claim for return of the rent paid for April and for return of the security deposit. The Pre-approval Application form, Rental Application check, Offer to Lease and Tenancy Agreement were all signed by the Tenant and a co-tenant. I find that the Tenancy Agreement included a co-tenant.

The Tenant stated that the co-tenant is a minor. Section 3 of the Act states:

Act applies to tenancy agreement with a minor

- 3** A person who has not reached 19 years of age may enter into a tenancy agreement or a service agreement, and the agreement and this Act and the regulations are enforceable by and against the person despite section 19 of the *Infants Act*.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

I accept the Landlord's testimony that the co-tenant did not end the tenancy and therefore the Tenant is not entitled to the return of the April rent, or for return of the security deposit paid to the Landlord. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. The responsibility falls to the tenants to apportion among themselves the amount owing to the Landlord.

The Tenant's application for a monetary order is dismissed without leave to re-apply.

Application for an Order that the Landlord Comply with the Act

The Tenant did not state the Section of the Act, regulation, or tenancy agreement to which he was requesting the Landlord comply. The Tenant has not proven this portion of his claim. Therefore, this portion of the Tenant's application is dismissed without leave to re-apply.

Application for an Order that the Landlord return the Tenant's personal property

Section 65(1)(e) of the Act states:

Director's orders: breach of Act, regulations or tenancy agreement

65 (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(e) that personal property seized or received by a landlord contrary to this Act or a tenancy agreement must be returned.

I do not find that the Landlord has breached the Act or the Tenancy Agreement, nor do I find that the Landlord seized or received the Tenant's bed.

The Tenant had opportunity to remove the bed on May 19, 2009, when he attended at the rental unit to remove his belongings.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

June 5, 2009
