

DECISION

Dispute Codes CNC OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy issued for cause and to obtain an Order to have the Landlord comply with the Act in relation to issuing receipts for rent, issuing invoices and receipts for payments of utilities, and for the Landlord to issue proper written notice prior to entering the rental unit.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, delivered in person to the Landlord's place of business on June 17, 2009. The Landlord confirmed receipt of the Notice of Dispute Resolution.

The Landlord, Tenant and the Tenant's advocate appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 47 and 62 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on March 1, 2007. Rent is payable in the amount of \$1,250.00 and the tenant paid a security deposit of \$625.00 on February 5, 2007.

The Tenant's advocate testified that the tenancy agreement states that rent is payable on the first of each month however the Landlord insists that the Tenant pay her rent in cash on the day before the first of each month (the last day of the previous month).

The Landlord testified that he did not submit any evidence in support of his issuance of the 1 Month Notice to End Tenancy. The Landlord argued that the Tenant held a party either in December 2008 or January 2009 and that the rental unit was damaged by people who attended the party. The Landlord testified that he felt the damage was going to cost approximately \$3,000.00 to repair and that he gave the Tenant 5 or 6 months to repair the damage. When asked what was damaged in the home the Landlord testified that a 4 'x 8' mirror was broken and that there was other damage. The Landlord stated that he could not be more specific with respect to the damage only that "his house is damaged". The Landlord testified that he served the 1 Month Notice to End Tenancy by placing a copy of the notice into the Tenant's mailbox on June 13, 2009.

The Tenant's advocate argued that the 1 Month Notice to End Tenancy was received by the Tenant on June 16, 2009 and that it was sent via registered mail. The advocate provided Canada Post tracking numbers in her testimony.

The Tenant's advocate testified that the Landlord did not complete a move-in inspection report with the Tenant and that the Landlord has entered the rental unit on several occasions without proper written notice to the Tenant.

The Tenant confirmed that the Landlord has walked into the rental unit while she had guests at her home and that the Landlord did not knock prior to entering.

The Landlord first testified that he had completed a move-in inspection report but later changed his testimony and acknowledged that he did not conduct a move-in inspection and did not complete a form in the presence of the Tenant prior to her taking possession of the rental unit.

When asked what evidence the Landlord had to support the reasons why he issued the 1 Month Notice for Cause to the Tenant, the Landlord replied by stating he saw the damage to his home, that the damage was a result of the Tenant having a wild party,

that the Landlord determined the damage was going to cost \$3,000.00 to repair, and that the Landlord knows that the Tenant has put his property at risk.

The Tenant argued that a guest of hers had four people over, while she was not home and when the Tenant returned home she stated that the guests would not leave, so the Tenant left for the evening. The Tenant stated that when she returned the next day the large mirror was broken. The Tenant testified that her father paid to have the mirror repaired last month.

The Tenant advised that she pays the rent with cash by depositing the funds directly into the Landlord's bank account and that the bank issues the Tenant a receipt for the deposit.

The Tenant is applying for an Order to have the Landlord comply with the *Residential Tenancy Act* as follows:

- 1) For the Landlord to issue proper receipts for rent paid and to not demand that rent is paid prior to the 1st of each month.
- 2) To have the Landlord issue proper invoices to the Tenant for her share of the utility costs, with copies of the original utility bills attached to the Landlord's invoice and for the Landlord to issue the Tenant a receipt when receiving payments for utilities.
- 3) To have the Landlord comply with the Act and provide proper written notice prior to the Landlord accessing the rental unit.

Analysis

The Landlord presented the merits of his issuance of the 1 Month Notice to End Tenancy based on his testimony and without the support of documentary evidence. The Landlord admitted that he did not have a move-in inspection report to prove the condition of the rental unit prior to the Tenant moving in and the Landlord deems the damage to his home to be \$3,000.00 with no supporting evidence.

The Tenant admitted that there was damage to the mirror located in the rental unit, that there was no other damage caused, that her friend's guests caused the damage, and that her father paid to have the damaged mirror replaced. Section 32(3) of the *Residential Tenancy Act* states that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property. I do not accept the Tenant's argument that because she didn't cause the damage, that her friend's guests did, that this may excuse her liability for damage caused during her tenancy.

In the presence of contradictory testimony, and the absence of any documentary evidence, I find that the Landlord has failed to prove the merits of the 1 Month Notice to End Tenancy, and I hereby cancel the 1 Month Notice to End Tenancy that was issued on June 11, 2009.

With respect to the Tenant's request to Order the Landlord to comply with the *Residential Tenancy Act* I find as follows:

- 1) The Tenant confirmed that she deposits the rent payment into the Landlord's bank account and that she is issued a receipt from the bank. I find that by dealing directly with the bank, the receipt issued either by the bank teller or a bank machine constitutes a valid receipt. I note that if the Landlord requires the cash payment to go directly to him, then the Landlord would be required to issue a receipt to the Tenant in compliance with section 26(2) of the Act. With respect to when rent is to be paid section 26(1) states that the Tenant must pay rent when it is due under the tenancy agreement. I find that the Landlord **cannot** demand that rent be paid on a day earlier than the day of the month listed in the tenancy agreement for when rent is payable.
- 2) The evidence supports that the utilities are in the Landlord's name, that the cost of the utilities is shared between the upper and lower tenants, and that the Landlord has not previously provided proper invoices or receipts to the Tenant for payment of the utilities. I hereby Order the Landlord to issue

proper invoices to the Tenant for her share of the utility costs, with copies of the original utility bills attached to the Landlord's invoice. I Order the Landlord to issue the Tenant a receipt when receiving payments for utilities in accordance with section 46(6)(b) of the Act.

- 3) I find that the testimony of all parties confirmed that the Landlord has been entering the rental unit without the Tenant's permission and without prior written notice. I hereby order the Landlord to comply with Section 29 of the Act which states that a landlord **must not** enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies: (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; (b) at least 24 hours and not more than 30 days before the entry the landlord gives the tenant **written notice** that includes the purpose for entering, which must be reasonable; the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Conclusion

I Hereby Order that the 1 Month Notice to End Tenancy, issued on June 11, 2009, is cancelled, and is of no force or effect.

I Hereby Order the Landlord to comply with the *Residential Tenancy Act* specifically sections 26, 46(6)(b), and 29 of the *Residential Tenancy Act*, as listed above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 28, 2009.

Dispute Resolution Officer