

## **Decision**

### **Dispute Codes:**

CNC

MNDC

OLC

LRE

LAT

FF

### **Introduction**

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

This is the Tenant’s application to cancel a Notice to End Tenancy for Cause; for a monetary order for compensation for damage or loss; an order that the Landlord comply with the Act; an order suspending or setting conditions on the Landlord’s right to enter the rental unit; an order authorizing the Tenant to change the locks on the rental unit; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided by the parties prior to the Hearing. Both parties gave affirmed evidence and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Should the Notice to End Tenancy for Cause issued on May 26, 2009, be cancelled?

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Is the Tenant entitled to orders restricting the Landlord's access to the rental unit?
- Is the Tenant entitled to recover the cost of the filing fee from the Landlord?

### **Background and Evidence**

The Landlord's agent served the Tenant with the Notice to End Tenancy on June 10, 2009, by personally handing the Notice to the Tenant at the rental unit.

The Tenant attempted to serve the Landlord with the Notice of Hearing documents on June 2, 2009, by personally handing the documents to the Landlord, but the Landlord closed the door in her face. The Tenant attempted to serve the Landlord again in the same manner on June 3, 2009, with the same result. The Tenant left the package of documents at the Landlord's door.

There is no written tenancy agreement in place. The Tenancy started on June 1, 2008. The monthly rent is currently \$985.00 per month, due on the first day of each month. The Tenant paid a security deposit to the Landlord in the amount of \$475.00 on May 29, 2008.

### **Regarding the Tenant's application to cancel the One Month Notice to End Tenancy for Cause**

The Landlord's agent gave the following testimony and evidence:

- The tenant removed all of the carpet and underlay from the rental unit without the Landlord's written permission, and therefore has damaged the Landlord's property. The Landlord's Notice to End Tenancy for Cause gives the following

reason: the tenant has engaged in illegal activity that has, or is likely to, damage the landlord's property.

The Tenant gave the following testimony and evidence:

- The Tenant and the Landlord's agent used to be good friends.
- The Tenant met with the Landlord's agent and another party on April 28, 2008, to discuss the Tenant moving in to the building. The Tenant did not want to rent the apartment if it had carpets. The Landlord's agent agreed to the Tenant removing the carpets prior to moving in.
- The Landlord's agent had removed the carpet in her own apartment and asked the Tenant to purchase a particular type and colour of paint for use on the bare floor once the carpets were removed, so if any paint was left over the Landlord's agent could use it to touch up her own floor. The Landlord's agent allowed the Tenant to use the Landlord's agent's corporate account when purchasing the paint. The Tenant provided copies of two receipted invoices, in the name of the Landlord's agent, for paint and painting supplies, dated June 28 and June 29, 2008.
- The Landlord's agent is an interior designer and gave the Tenant advice about what type and size of area rugs the Tenant should use once the carpets were removed and the floor painted. The Tenant, acting on the Landlord's agent's advice, purchased expensive custom-made area rugs.
- The carpets were removed under the supervision of the Landlord's agent before the Tenant moved into the rental unit. There was no move-in inspection done when the Tenant took possession of the rental unit.

Landlord's agent's response:

- The Landlord's agent agreed that she did meet with the Tenant to discuss the possibility of removing the carpets prior to the Tenant moving into the rental unit, but stated that the Tenant did not have her final permission to do so.

Regarding the Tenant's application for orders limiting the Landlord's access to the rental unit

The Tenant gave the following testimony and evidence:

- On November 26, 2008, a threatening note was left on the Tenant's desk, while the Tenant was not home. The Landlord's agent is the only other person who has a key to the rental unit and the Tenant believes the Landlord's agent entered her apartment without her permission and without notice and left the note on her desk.
- The Landlord's agent and an unidentified man entered the Tenant's apartment without notice and without permission at 10:15 a.m. on May 26, 2009, while the Tenant and a friend were listening to music. The Tenant felt intimidated by the Landlord's agent and the unidentified man, who did not leave immediately when being asked to do so. They eventually left after the Tenant's friend ordered them to do so.
- The Tenant does not feel safe in her own home, for fear of unlawful entry by the Landlord's agent.

Landlord's agent's response:

- The Landlord's agent did not respond to the Tenant's allegation regarding the threatening note.
- On May 26, 2009, the Landlord's agent gave the Tenant written notice that she would be installing carpet in the rental unit on June 10 and 11, 2009. The incident the Tenant is describing did not happen on May 26, 2009, and the Landlord's agent believes the Tenant has the wrong date. The Landlord's agent and another person did enter the Tenant's apartment on June 10, 2009, in accordance with the notice. The Landlord's agent and another person knocked at the door first, but no one answered. She heard music coming from the

apartment and thought the Tenant was not home, but left the music on, so she let herself in. When the Tenant asked her to leave, she complied.

#### Regarding the Tenant's application for a monetary order for damages or loss

The Tenant gave the following testimony and evidence:

- The Landlord's agent is harassing the Tenant by constantly leaving notices and demands and by entering the Tenant's home without her knowledge or consent.
- The Tenant is applying for damages in the amount of \$5,000.00 because she is unable to find a roommate to share costs because of the harassing behaviour of the Landlord's agent.

The Landlord's agent's response:

- The Landlord's agent denies that she is harassing the Tenant.
- The Landlord's agent provided copies of 10 letters from other tenants in the building together with a copy of a letter from the on-site gardener. The letters were all written to attest to the Landlord's pleasant nature and professional behaviour.

#### Analysis

During her testimony, the Landlord's agent made reference to monetary claims she feels she has against the Tenant. This Hearing was scheduled to determine the Tenant's Application. The Landlord did not file an Application for Dispute Resolution. Therefore, I have not considered any of the Landlord's agent's submissions for a monetary order regarding alleged damages.

I accept that the Landlord's agent received the Notice of Hearing documents on June 3, 2009.

I accept the Tenant's testimony that she had an oral agreement with the Landlord's agent that she could remove the carpets and underlay and paint the floors before moving into the rental unit. The Landlord gave her advice, in her capacity as an interior designer, chose the colour of the paint for the floors, and provided the Tenant with her corporate account number in order to purchase the paint. I do not find that the Tenant has "engaged in illegal activity that has, or is likely to, damage the landlord's property". The Notice to End Tenancy for Cause is cancelled. The tenancy remains in full force and effect.

I don't accept any of the remaining claims made by the Tenant. Both parties willingly inter-mingled their personal friendship with their Landlord/Tenant relationship. I cautioned both parties that they have been put on notice with respect to their rights and obligations under the Act. I suggested to the parties, and the parties agreed, that any further communication be done in writing and that the parties treat each other with respect in their dealings with each other. The Landlord's agent will provide the Tenant 24 hour notice, in accordance with the Act, for any future inspections.

The Tenant has been successful in her application to cancel the Notice to End Tenancy and is entitled to recover the cost of the filing fee from the Landlord. In accordance with Section 72(2)(a) of the Act, the Tenant is at liberty to deduct \$50.00 from future rent owed to the Landlord.

### **Conclusion**

The Tenant's application to cancel the Notice to End Tenancy dated May 21, 2009, is cancelled. The tenancy remains in full force and effect.

The Tenant is entitled to recover the cost of the filing fee from the Landlord. Pursuant to Section 72(2)(a) of the Act, the Tenant may deduct the amount of \$50.00 from rent due to the Landlord.

The remainder of the Tenant's application is dismissed without leave to reapply.

Dated: July 17, 2009.

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