

DECISION

Dispute Codes OPL OPB MNR FF
 CNC FF
 CNL FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, one filed by the Landlords and two separate applications filed by the Tenant.

The Landlords filed to obtain an Order of Possession for landlord's use of the property, and because the tenant has breached an agreement with the landlord. The Landlords are also seeking a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed his first application on November 19, 2009 to obtain an Order to cancel the notice to end tenancy issued for cause and to recover the cost of the filing fee from the Landlords for this application. The Tenant's second application was filed on November 20, 2009 to obtain an Order to cancel the notice to end tenancy issued for landlord's use of the property and to recover the cost of the filing fee from the Landlords for this application.

Service of the hearing documents, by the Landlords to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on December 1, 2009. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant confirmed receipt of the hearing package and copies of the evidence.

Service of the hearing documents, by the Tenant to the Landlords, was done in accordance with section 89 of the *Act*, with each dispute resolution hearing package being sent to the Landlords via courier on November 20, 2009. The Landlords confirmed receipt of both hearing packages and a copy of the Tenant's evidence. The Landlords, the Tenant, and the Tenant's witness appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

1. Has the Landlord established entitlement to an Order of Possession under section 55 of the *Residential Tenancy Act*? If so on which effective date.
2. Has the Landlord established entitlement to a Monetary Order under Sections 67 and 72 of the *Residential Tenancy Act*?
3. Has the Tenant established entitlement to an Order to cancel the notices to end tenancy under Sections 47 and 49 of the *Residential Tenancy Act*?

Background and Evidence

Upon hearing from both parties and upon review of the evidence before me I make the following findings: The Tenant entered into a written tenancy agreement with the previous owner of the rental property on April 1, 2004. The current Landlords purchased the rental property on May 31, 2008 at which time the Landlords requested the Tenant sign a new tenancy agreement between them, however the Tenant refused to enter into a written agreement with his new Landlords. A tenancy agreement exists between the new owners of the property and the Tenant based on the original agreement. The tenant in the basement suite has acted as the Landlord's agent for the purposes of collecting rent and for emergencies relating to maintenance issues at the rental unit such as plumbing and electrical issues. The Tenant has been instructed to deal with the Landlords for all other issues.

The Landlords testified that when the Tenant refused to enter into a written tenancy agreement with them they agreed to the following additional verbal terms of the tenancy agreement: there will be no smoking inside the rental unit, the Tenant will deliver his rent payment to the lower tenant who will deliver it to the Landlords, the Tenant can contact the lower tenant in cases of emergency however with all other issues the Tenant is to contact the Landlords directly.

The Tenant argued that he did not enter into any verbal terms in addition to his written tenancy agreement.

The Landlords testified that the Tenant was issued a 2 Month Notice to End Tenancy for Landlord's use on November 11, 2009 when it was served personally to the Tenant by the Male Landlord at approximately 1:00 p.m. at the rental unit.

Both Landlords argued that in the presence of the shaky relationship that had developed between themselves and the Tenant they made the decision to evict the Tenant, sell their current residence and move into the rental unit themselves.

The Landlords testified that they have not made any formal arrangements to sell their current home however they have been in contact with a realtor and have now decided that they will need to complete some renovations on their existing home before putting it on the market to sell in the spring. The Landlords also confirmed that they have not made any formal arrangements, such as utility changes, to move into the rental unit as they were awaiting the outcome of today's hearing.

The Tenant argued that the Landlord's have not issued the 2 Month Notice to End Tenancy for their own use rather the Landlords want to re-rent the rental unit at a higher rate.

The Landlords testified that they were informed by the lower tenant, near the beginning of October 2009 that the Tenant had moved a female Tenant into the rental unit. The Landlords argued that they were told by the lower tenant of a conversation the lower tenant had with the Tenant whereby the lower tenant told the Tenant to call the Landlord to discuss the issue of moving in another tenant.

The Landlords testified that the Tenant never contacted the Landlords to discuss the additional tenant nor did the Tenant bring up the subject in any conversations he had with the Landlords. The Landlords confirmed that they did not initiate contact with the Tenant to deal with the additional tenant being added to the rental unit.

The Tenant's Witness testified that she moved into the rental unit on September 27, 2009, that she is living common law with the Tenant, and that she never attempted to hide that she was moving in. The Witness stated that the Tenant told her that he spoke to the lower tenant and informed the lower tenant that she was moving in.

The Landlords testified and provided a chronological list of events which began in early October 2009 and ended with the issuance of the two notices to end tenancy.

The Landlords argued that they told the Tenant they wanted references from his girlfriend so they could check them out before accepting or denying her tenancy. The Landlords confirmed that the Tenant was issued a written notice/warning letter on October 23, 2009 to have the additional tenant move out of the rental unit.

The Landlords argued that after serving the warning letter and notices to end tenancy the Tenant's behaviour towards the Landlords has become inappropriate where the Tenant yells and swears at the Landlords and where the Tenant has prevented the Landlord from gaining entry to the rental unit.

The Tenant confirmed receipt of the written notice/warning letter however the Tenant argued that he has not avoided discussing or dealing with the addition of his girlfriend as a tenant.

The Tenant confirmed that he did not request permission, in writing from the Landlord, to add his girlfriend as a tenant to the rental unit and that the first time he put his request in writing was with his application for dispute resolution.

In closing the Landlords refuted the Tenant's evidence whereby the Tenant claims that he did not have the Landlords' address for service. The Landlord referred to the Tenant's evidence where he had listed the Landlord's address on both the application for dispute resolution and on the courier packages which is proof that the Tenant had the Landlord's address. Also, the Landlords stated that it is truly their intention to move into the rental unit to be closer to their family.

The Tenant refuted the Landlords' testimony claiming that the Landlords never requested references from his girlfriend, the Landlords' never intended to allow the Tenant's girlfriend permission to move in without charging more rent, the lower tenant saw the trailer and moving boxes so knew someone else had moved into the rental unit, and the Landlord has always known that the Tenant smokes in the back room in the rental unit.

Analysis

When a Tenant has filed to cancel a 2 Month Notice to End tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The evidence before me supports that while the Landlords may have plans to eventually move into the rental unit it was the presence of the shaky relationship between the Tenant and Landlords which caused the Landlords to initiate the notice to end tenancy. That being said I find that there is the presence of an ulterior motive for having the Tenant vacate the rental unit, thus the Landlord has failed to prove the good faith

requirement as listed above and the 2 Month Notice to End Tenancy issued on November 11, 2009 is hereby cancelled and of no force or effect.

The evidence and testimony before me supports that the Tenant moved another person into the rental unit without prior written approval from the Landlords in breach of their tenancy agreement. I also note that the Tenant avoided discussing the situation with the Landlords and once the Landlords began to initiate their rights the Tenant began to display inappropriate behaviour towards the Landlords and refused to have the additional occupant vacate the rental unit.

I have found that the 1 Month Notice to End Tenancy for Cause for breach of material term of the tenancy agreement has been issued and served in accordance with the section 47 of the Act. Upon consideration of all the evidence presented to me, I find the Landlords had valid reasons for issuing the 1 Month Notice to End Tenancy and I hereby dismiss the Tenant's application to cancel the Notice.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an application for an Order of Possession.

The Landlord has claimed a loss of \$450.00 in unpaid utilities however the Tenant's tenancy agreement provides that the Tenant's rent includes the cost of utilities. While the utilities may have gone up with the addition of an occupant the utilities remain the responsibility of the Landlord so I hereby dismiss the Landlord's monetary claim of \$450.00.

As the Tenant has not been successful with either of his applications I decline to award him recovery of the filing fees.

As the Landlords have been partially successful with their application I find they are entitled to recover the \$50.00 filing fee from the Tenant for this application.

Conclusion

I HEREBY DISMISS the Tenant's application to cancel the 1 Month Notice to End Tenancy for Cause, without leave to reapply.

I HEREBY DISMISS the Tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Use, without leave to reapply.

I HEREBY FIND that the Landlords are entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlords' decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: January 04, 2010.

Dispute Resolution Officer