

DECISION

Dispute Codes

CNC MNDC OLC FF

Introduction

This hearing convened on May 17, 2010, and reconvened for the present session on May 27, 2010. This decision should be read in conjunction with my interim decision of May 18, 2010. The parties were reminded they were still under the affirmation they had accepted on May 17, 2010 and additional documentary evidence submitted after May 17, 2010 by the Landlord would not be considered in my decision.

Issues(s) to be Decided

Is the Tenant entitled to an Order to cancel the notice to end tenancy under section 47 of the *Residential Tenancy Act*?

Is the Tenant entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to an Order to have the Landlord comply with the Act under section 62 of the *Residential Tenancy Act*?

Continuation of Background and Evidence

The Tenant testified and confirmed that he was seeking \$3,400.00 in damages for reasons which include time required to prepare his case for dispute resolution; for having to deal with frequent and ongoing interference of the Landlord continually telling him what he cannot do with respect to his boat being on the property in June and July 2009, and telling him that he cannot prop open the side door, and he cannot leave paint in the hallways, and he cannot turn on the heaters in the hallway; for invasion of the Landlord taking pictures of his cars that are in the parking lot; for the Landlord not saying hi to him or giving him dirty looks as she walks by; and the constant requests by the Landlord for the Tenant to provide copies of insurance every time he brings a new car into the parking lot.

I asked the Tenant what happened between his initial complaint letter to the Landlord in July 2009, and his letters to the Landlord which began in March 2010. The Tenant advised the Landlord showed disregard for his rights by making up difficult rules which

were not in his initial lease, such as not being allowed to prop open the side door, having to provide proof of insurance for vehicles parked in the parking lot, not being allowed to turn up the heat in the hallways, and not being allowed to have paint cans in the hallway. The Tenant confirmed that he continues to disregard the Landlord's rules by propping open the side door as he has not seen proof from the Landlord that this is a fire door. The Tenant argued that he initiated the March 2010 letters to stick up for himself and another tenant's rights and he feels the Landlord's issuance of the notice to end tenancy is retaliation to his application for monetary compensation.

The Landlord testified that she manages the 50 unit building and continuously has to deal with the Tenant not complying with the rules. The Landlord stated that she only received one copy of the Tenant's application via registered mail and the one she received was the amended application which included his request to cancel the notice to end tenancy. The Landlord argued that she has never harassed the Tenant, has never stole his paint, she does not like the accusations the Tenant has made against her and her health, that she has never placed letters or notes on his cars, has only posted letters on his door. The Landlord stated that the Notice to End Tenancy was not issued for retaliation rather was issued for the reasons stated on the notice. The Landlord testified that she has attended the hearing to request I knock down the Tenant's monetary claim and to request an Order of Possession effective upon two days after service.

The Property Manager testified he has full respect for the Landlord as she has done a good job managing the 50 unit building and he attended these hearings as a support role for the Landlord. The Property Manager argued the Tenant's letters are bad mouthing the Landlord and the "neighbor" letter is nothing but an attempt by the Tenant to continue bad mouthing the Landlord and stir up problems with the other tenants in the building. The Property Manager stated that they received a written note from the Tenant after the May 17, 2010, hearing that stated if they would just leave the Tenant alone no further civil action will be taken.

In closing the Tenant stated that he is asking to be left alone for the future.

Analysis

Upon careful consideration of all of the testimony and documentary evidence I find the Tenant's actions have become antagonistic towards the Landlord and are a direct result of the Tenant not wanting to comply with the Landlord's rules governing the residential property. A Landlord has the obligation under section 32 of the Act to provide and maintain the residential property in a manner that complies with health, safety and

housing standards, for all tenants, while the Tenant has the obligation under section 28 of the Act to use the residential property in a manner that is free from significant interference with the Landlord. I find the evidence supports that the Landlord's actions are in compliance with section 32 while the Tenant's involvement with the "dear neighbor" letter constitutes a contravention of section 28 of the Act.

I do not accept the Tenant's argument that the Notice was issued in retaliation to his application for dispute resolution as the Tenant could not provide evidence that he served the Landlord with a copy of this initial application. If the first application was sent registered mail to the Landlord, as stated by the Tenant, the Landlord could not have received it prior to issuing the Notice.

Upon review of the 1 Month Notice to End Tenancy issued March 23, 2010, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice. Based on the aforementioned I hereby dismiss the Tenant's request 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 oral request for an Order of Possession during the scheduled hearing.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The Tenant is seeking \$3,400.00 in monetary compensation claiming the Landlord caused him a loss to his quiet enjoyment however the evidence supports the Tenant's actions can be interpreted as that of a person who chooses not to follow rules and feels entitled to be left alone and not comply with the rules. There is no evidence before me which proves the Landlord violated the Act, Regulation, or tenancy agreement. Based on the aforementioned I find the Tenant has failed to prove the test for damage or loss, as listed above, therefore I dismiss his application for monetary compensation.

Having granted the Landlord an Order of Possession I find the Tenant's request for an Order to have the Landlord comply with the Act to be moot and therefore no further action will be taken in response to this request.

The Tenant has not been successful with his application and therefore I decline to award him recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's claim, without leave to reapply.

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced 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: May 27, 2010.

Dispute Resolution Officer