

## **DECISION**

**Dispute Codes**      AAT, FF, LRE, O, OPT, RPP, CNC, CNR

### **Introduction**

This hearing was convened by way of conference call this date to deal with the tenant's application for an order that the tenant be given access to or from the rental unit for the tenant or the tenant's guests, to recover the filing fee from the landlord for the cost of this application, for an order suspending or setting conditions on the landlord's right to enter the rental unit, to obtain an Order of Possession of the rental unit, for an order that the landlord return the tenant's personal property, and for an order to cancel notices to end tenancy for cause and for unpaid rent.

Despite being served with the Tenant's Application for Dispute Resolution and the notice of hearing by registered mail on May 7, 2010, the landlord did not attend the hearing.

### **Issues(s) to be Decided**

- Is the tenant entitled to an Order of Possession?
- Is the tenant entitled to an order cancelling the notice to end tenancy for cause?
- Is the tenant entitled to an order cancelling the notice to end tenancy for unpaid rent?
- Is the tenant entitled to an order allowing access to or from the rental unit for the tenant or the tenant's guests?
- Is the tenant entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?
- Is the tenant entitled to an order that the landlord return the tenant's personal property?

### **Background and Evidence**

This tenancy began on November 1, 2003, as a fixed term tenancy, which expired and then reverted to a month-to-month tenancy. The tenant testified that she had dealt with a property manager for years, and recently, the owner took over management of the building.

Rent in the amount of \$1,235.00 is payable on the 1<sup>st</sup> day of each month, and there are no rental arrears, with the exception of rent for the month of May, 2010, which the tenant testified was refused by the landlord. At the outset of the tenancy, the tenant paid a security deposit in the amount of \$525.00.

The tenant and her partner had an opportunity for a lengthy vacation, and decided to sub-let their unit furnished for 6 months, without the permission of the landlord. Once they had returned, they called the landlord on April 30, 2010 to let him know that they were aware that the post dated cheques they had provided for rent was depleted, and that there would be another batch of post dated cheques in their mail box for him to retrieve prior to the 1<sup>st</sup> of May, 2010. She testified that the landlord told her that they don't beg for rent cheques, and she should take them to a restaurant, but he did not provide an address and left it to them to find it. Eventually, the arrangement was made that the landlord would attend to pick up the cheques, but instead, the landlord called the police. When the police arrived, they received a copy of the sub tenancy agreement.

The tenant further testified that the sub tenants were supposed to move out by April 28, 2010, but stayed until May 1, 2010 with the consent of the tenant.

On May 1, 2010 the landlord went to the unit and retrieved the keys from the sub tenants. The tenant's mother attended at the unit to pay the landlord rent for the month of May and discovered that the landlord was in the process of changing the locks and would not accept the rental payment. The tenant's mother called the tenant on her cell phone, and the tenant spoke with the landlord who stated that he was not accepting the rent.

A friend of the tenant called the landlord on her behalf which resulted in a verbal agreement that the tenants were to move within 15 days and pay ½ month's rent. However, the landlord provided a different agreement, not in the same terms, and taped it to the window.

The tenants were not able to get into the unit and went there daily, concerned for their belongings. On May 4, 2010 she saw 2 notices to end tenancy posted to the inside of the window and a notice from the landlord stating that any request to change the locks was not permitted, and to contact the landlord if such a request was made. At no time were the tenants served with the notices to end tenancy. A photograph of the window was provided in advance of the hearing which shows the Agreement that the tenant did not sign and did not agree to, the note to the locksmith, a yellow foolscap note addressed to the tenants requesting they call the landlord to arrange for recovery of the belongings, and another notice that states "Illegal sublet agreement."

The tenants have found another place to live, but request an Order of Possession to allow them to move and properly clean the apartment in order to receive back their security deposit.

### **Analysis**

The landlord, according to the evidence, has decided to take the law into his own hands, and has breached the *Residential Tenancy Act*. The landlord may have been annoyed with the tenants subletting the unit without his permission however the *Residential Tenancy Act* protects landlords and tenants from unreasonable actions from one another, so long as they comply with the *Act*.

Firstly, I refer to Section 34:

**34** (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

The tenant testified that she did not obtain the consent of the landlord to sublet however the landlord did not attend to provide evidence of any reason to withhold the consent.

Secondly, Section 47 of the *Act* permits the landlord to give a notice to end tenancy if the tenant has subleased the unit without first obtaining the landlord's written consent however the landlord must do so in accordance with subsection (2):

(2) A notice under this section must end the tenancy effective on a date that is

(a) not earlier than one month after the date the notice is received, and

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find that the landlord did not comply with Section 47(2), and if he had, the notice to end tenancy would not be effective until June 30, 2010. I also find that the landlord has unreasonably locked the tenants out of their home, and have caused distress and inconvenience by breaching the *Act*.

## **Conclusion**

For the reasons set out above, all notices to end tenancy are hereby cancelled.

I hereby grant an Order of Possession in favour of the tenants, which will expire on June 30, 2010 at 1:00 p.m., at which time the landlords will have an Order of Possession.

I further order that the tenants receive a rent abatement for the months of May and June, 2010 for the entire amount of rent payable under the tenancy agreement for those months.

I further order that the landlord comply with the *Residential Tenancy Act*, Section 29 by not entering the rental unit for any purpose unless the tenant gives permission at the time of entry, or the landlord gives at least 24 hours and not more than 30 days before the entry written notice including the purpose for entering, which must be reasonable, and the date and time of the entry, which must be between 8 a.m. and 9 p.m. unless the

tenants otherwise agree, or an emergency exists and the entry is necessary to protect life or property. I further order that the landlord be permitted to inspect the rental unit once every 30 days, upon giving the notice referred to in this decision and the *Act*.

I further order that the landlord comply with the *Residential Tenancy Act*, Section 38 with respect to the security deposit.

I further order that the landlord pay to the tenant the amount of \$50.00 for recovery of the filing fee for the cost of this application.

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 26, 2010.

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Dispute Resolution Officer