



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, MNDC, OPT, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application to cancel a notice to end tenancy for cause, for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order of possession of the rental unit and to recover the filing fee from the landlords for the cost of this application.

The parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

Issues(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the tenant entitled to an order of possession of the rental unit?

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

This fixed term tenancy commenced on October 1, 2008 and expires on September 30, 2010. The tenant still resides in the rental unit. Rent in the amount of \$1,350.00 is due in advance on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy, the landlords collected a security deposit in the amount of \$675.00 from the tenant and a co-tenant.

The tenant testified that in early March, 2010 the landlord told the tenant that he would like to sell, and at that time the tenant advised the landlord that the co-tenant was moving out. The landlord called the co-tenant at work to ask when she was moving out, but the co-tenant did not know. The tenant further testified that the landlord wanted complete control and would not allow any other roommates, and the landlord was concerned about rent not being paid. Throughout the last week of March the tenant continued to look for roommates, and found someone who paid the tenant a security deposit and rent totalling \$900.00, and this person wanted to occasionally sleep in the studio on the property, but the landlord denied that request. That particular candidate decided not to accept the accommodation and the tenant gave back the \$900.00. The tenant then found another candidate who had a dog, but the landlord denied that request as well stating that no dogs were allowed.

The tenant further testified that the landlord wanted a new tenancy agreement to remove the previous co-tenant who moved on April 1, 2010. However, instead of a new tenancy agreement, the landlord called the tenant on April 5, 2010 and told him that he had to move out by the end of April, failing which a Writ of Possession would be issued, and that if the tenant didn't go to the landlord's house to sign a Mutual Agreement to End Tenancy, he would be forced out and be responsible for rent until the end of the fixed term. The tenant was also told that the landlord was selling the house.

Over the next few days the tenant suggested other ideas, such as keeping the house clean for realtors and perspective purchasers to view the home, in order to stay, but the landlord refused. The tenant testified that this dispute emotionally wrecked him.

The tenant had a meeting the morning of April 11, 2010 with the female landlord and the previous co-tenant, wherein the landlord told the tenant that he could stay for one more month, and the tenant gave the landlord a request to withdraw the notice to end tenancy, but the landlord refused and said she was going to find another tenant. The tenant testified that he feels he's being punished for sticking up for his rights; the landlord refused roommates, cashed the rent cheque and evicted him. A new

roommate moved in on May 8, 2010, and the previous co-tenant did not pay April or May rent.

The tenant further testified that on May 3, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. He stated there never was a problem with rent payments, but the landlord deliberately attempted to cash a cheque early in the day before the tenant made a deposit into that account. Further, on May 18, 2010 the landlord conducted an inspection for no reason. He stated that the landlord wanted to meet the new tenant and look for damage to the house, but knew better because they had already been there 3 times with realtors. On April 18, the landlord showed the house to perspective tenants; the house was never listed for sale. The tenant feels the landlord has breached Section 49 (2) (b) of the *Act*. The landlord told the tenant that she withdrew an application for dispute resolution and contends that her withdrawal and an email stating she permitted the tenant to have a roommate was her agreement to allow the tenant to stay.

The landlord testified that the landlords received the previous co-tenant's notice to vacate on March 31, 2010. He received 4 or more opinions from the Residential Tenancy Branch, one of which was that the tenancy was over because if one tenant moves, there should be a new agreement and there wasn't one signed. The previous co-tenant would not return phone calls of the landlords and would not sign a Mutual Agreement to End Tenancy.

The landlord further testified that the tenant moved in a roommate without the knowledge of the landlord, and the landlord was given references after the roommate moved in.

The landlord further testified that this house was to be the retirement home of the landlords and took a lot of pride in its condition. The tenant told the landlord that he didn't care about the floors in the house, and has been rude to both landlords. The landlords expected the tenant to email an application to them for the new roommate but he didn't. That would have been a simple solution to the dispute.

The tenant is claiming ½ a month's rent for loss of quiet enjoyment pursuant to Section 28 of the *Residential Tenancy Act* for being harassed by the landlord.

Analysis

Firstly, dealing with the application to cancel the notice to end tenancy for cause, I have not been provided with a copy of that notice however I do not find that there is any cause to evict the tenant. I also find that rent is not owed, and therefore, both of the notices to end tenancy are hereby cancelled. However, I do not agree with the tenant that the landlord is in breach of Section 49 of the *Residential Tenancy Act*, in that the tenant has not vacated the unit.

The tenancy agreement entered into by the parties included the previous co-tenant. I refer to Residential Tenancy Policy Guideline 13 respecting rights and responsibilities of co-tenants:

“Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants. If any of the tenants remain in the premises and continue to pay rent after the date the notice took effect, the parties may be found to have entered into a new tenancy agreement. The tenant who moved out is not responsible for carrying out this new agreement.”

I therefore find that a new tenancy agreement has been entered into by the parties, albeit not in writing.

With respect to the tenant's application for compensation for damage or loss under the *Act*, regulation or tenancy agreement, I find that the landlord's actions, although unwelcomed by the tenant, have not devalued the tenancy however having found that the tenancy has been reinstated, I also find that the landlord had no basis for refusing the tenant to find another roommate. I therefore find that the tenant has provided

sufficient evidence to support his monetary claim. The tenant is also entitled to recover the filing fee from the landlords in the amount of \$50.00.

Conclusion

For the reasons set out above, I hereby order that the notices to end tenancy are hereby cancelled, and the tenant has possession of the rental home until the tenancy is ended in accordance with the *Act*.

I further order that the landlord pay to the tenant, by way of rent reduction the amount of \$725.00.

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: June 10, 2010.

Dispute Resolution Officer