

DECISION

Dispute Codes CNC, OPC, MND, MNSD, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties .

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together.

The tenant's application is a request to have a Notice to End Tenancy cancelled, and a request that the respondent/landlords bear the \$50.00 cost of the filing fee paid for their application for dispute resolution.

The landlord's application is a request for an Order of Possession, a request for a monetary order for \$426.13, a request to retain the full security deposit plus interest towards the claim and a request that the respondent/tenants bear the \$50.00 cost of the filing fee paid for their application for dispute resolution.

Background and Evidence

On February 24, 2010 the landlords served the tenant with a one month Notice to End Tenancy for cause.

The landlords testified that:

- The tenants son who is also a tenant in the rental unit had taken to sleeping in the common area of the rental property and even urinating and defecating in the common areas.
- The landlords therefore had to clean up this mess on numerous occasions.
- The tenants son has frequently been requested not to sleep in the common area however he refuses to comply with those requests.
- Due to the urinating and defecating, the common areas starting to have quite a strong smell and they have had complaints from other tenants about the smell.
- The tenants son also on one occasion kicked the window out of the entry door right in the face of the landlord and threatened the landlord. Fortunately the landlord was not injured.
- Cost to repair the kicked in door totalled \$426.13.
- The tenants son was arrested by the police and was ordered not to come within two blocks of the building however even though the police had informed the tenants that their son was not allowed in the building the female tenant allowed her son in on January 28. This was witnessed by the landlord who saw them enter the elevator together.
- The tenant son was seen in the building numerous times throughout the month of February and when questioned, each time he informed the landlords that his mother had let him in.

The landlords are therefore requesting that the Notice to End Tenancy be upheld and an Order of Possession be issued. They are also requesting that the tenants be held liable for the cost of the door repair and the filing fee.

The tenants testified that:

- Their son is an adult and as such is responsible for his own actions.
- Their son had become unruly and therefore they had kicked him out; however he has friends in the building and they frequently allowed him back in.

- We were not letting him into the building.
- We fully back the police in arresting him and although the female tenant did allow him back in the building after that arrest, she was unaware that he had been banned from being near the building at the time that she let them in.
- Since being informed that he was banned from the building they have not allowed him into the building at any time and if he has been seen in the building, he was allowed in by someone else not them.

The tenants are therefore requesting that the landlords application be dismissed, the Notice to End Tenancy be cancelled and of the landlords bear the \$50.00 cost of the filing fee which they paid for their application for dispute resolution.

Analysis

Based on the evidence presented it is my decision that the landlords have shown, on the balance of probabilities, that the tenants son was either still a tenant, or was an invited guest of the tenants at the time that the damage occurred.

The tenants claim that they had kicked him out and had not been letting him into the building, for some time prior to the door damage occurring; however the female tenant admitted that she did let the tenant into the building after the damage occurred but only because she was unaware that he had been banned from being near the building. If they had not been allowing the son in the building for some time, why would she have allowed him in at this time even if she did not know he had been banned.

I find it more likely that the female tenant at least, had been letting her son into the building either because she still considered him a tenant, or because he was an invited guest.

I therefore will not set aside the Notice to End Tenancy and will be issuing an order possession to the landlords. I will also allow the landlords monetary claim.

Conclusion

Tenants application

The tenant's application is dismissed in full without leave to reapply.

Landlords application

I have issued an order possession to the landlords for 1 p.m. on July 31, 2010.

I also allow the landlords full claim for the damages and filing fee totalling \$476.13.

I therefore order that the landlord(s) may retain the full security deposit plus interest:

\$357.70

I further Order that the Respondent(s) pay to the applicants the following amount:

\$118.43

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 30, 2010.

Dispute Resolution Officer