



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR MNDC FF RP LAT

Introduction

This hearing dealt with an application by the tenant for an order setting aside the landlord's Notices to End Tenancy, a monetary order, a repair order and an order allowing the tenant to change the locks to the rental unit. The tenant also requested recovery of the \$50.00 filing fee from the landlord. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Is the tenant entitled to any or all of the requested orders?

Background and Evidence

This tenancy began on May 1, 2010 and was for a fixed term ending on October 31, 2010. At the end of that term the tenancy was to continue on a month to month basis. The rent is \$785.00 due in advance on the first day of each month. A security deposit of \$392.50 was paid on April 16, 2009.

Since the start of the tenancy the landlord has served the tenant with six Notices to End Tenancy. Some of them were ten day notices and some were one month notices. None of the Notices issued by the landlord were in the proper form. Only five Notices were submitted into evidence.

On May 2nd the kitchen flooded while the tenant was doing the dishes. The tenant discovered that none of the pipes under the sink were connected to anything. The oven was also not working. Two days later a plumber arrived to fix the kitchen sink but notice had not been given to the tenant and the plumber entered the unit while the tenant was sleeping. The oven remained unrepaired until the end of June when, once again, someone entered the rental unit without notice. On June 27th, the toilet in the rental unit broke (it would not flush). The tenant left an angry message for the landlord on July 6th about the toilet. The next day the tenant received another Notice to End Tenancy.

At the hearing, Mr. F testified that since the day he moved in there has been a concerted effort by the landlord to get him to leave. He testified that the landlord has repeatedly asked him to leave and has even been showing his suite to prospective tenants. Mr. F has also become so nervous about their efforts to evict him that he has started photographing and videotaping himself sliding the rent under the caretaker's door. On a positive note, Mr. F did advise that all repairs to the sink, oven and toilet have been completed.

For his part, Mr. S testified that the tenant was "making all of this up" and that the tenancy was supposed to end on October 31st. Mr. S testified that the landlord never intended for this tenancy to continue month to month past October 31st. Mr. S also testified that the tenant has a cat in the rental unit without the permission of the landlord and that a pet damage deposit was never paid. With respect to the repairs, Mr. S testified that the tenant was making these problems up and that the rental unit had recently been completely renovated. Mr. S also testified that the tenant had been making it very difficult for the landlord's workers to get into the rental unit.

I note that throughout virtually the entire hearing, Mr. S was yelling. Even when Mr. F or I tried to speak it was virtually impossible to hear anything because Mr. S insisted on speaking over top of us in a very loud voice. I repeatedly asked Mr. S to stop yelling and to allow others to speak but he refused to abide by my request. By way of contrast,

Mr. F was polite and well-spoken throughout the hearing and gave his testimony in a forthright and credible manner.

Analysis

Notices to End Tenancy – Section 52 of the Act provides that in order to be effective, a notice to end tenancy must, among other things, “be in the approved form”. In the present case the landlord has used outdated forms from 2003 and 2005. As a result, I find that the six Notices that have been served on the tenant are invalid and must therefore be set aside.

Monetary Order – The tenant has claimed \$525.00 in compensation for violation of his right to quiet enjoyment of the rental unit. Mr. F complains that the landlord’s repeated Notices to End Tenancy, verbal confrontations and unannounced intrusions into his rental unit amount to harassment. Based on the evidence before me, including Mr. S’s behaviour during the conference call hearing, I am satisfied that the tenant’s right to quiet enjoyment of the rental unit has been infringed upon by the landlord. The tenant’s request of \$525.00 amounts to \$175.00 per month for the three months prior to the filing of his application. I am satisfied that this claim is reasonable.

Repair Order – At the hearing the tenant advised that all repairs had been completed and that a repair order was no longer necessary.

Order allowing Change of Locks – Based on the information presently before me, I am not satisfied that a change of locks to rental unit is justified. In my view, a change of locks is an extreme remedy intended for use in the most extreme of situations (for example in cases where the landlord tries to use the rental unit as a place to sleep when he is in town). I am not satisfied that the present situation rises to that level. However, I remind the landlord that written notice at least 24 hours in advance must be given to the tenant if the landlord requires access to the rental unit and that the tenant

may well succeed in obtaining a lock change order in a future hearing if the landlord is unable to prove such notice has been given and the intrusions continue.

Conclusion

Based on all of the above, I hereby grant the tenant's request for an order setting aside the landlord's Notices to End Tenancy dated September 2, 2010, August 2, 2010, July 31, 2010, July 28, 2010 and July 16, 2010. I dismiss the tenant's request for an order allowing the tenant to change the locks to the rental unit. I grant the tenant a monetary order in the amount of \$525.00. This amount may be deducted off the tenant's next rent payment.

Based on the outcome of this hearing, I also find that the tenant is entitled to recover the \$50.00 cost of this application from the landlord. This amount may also be deducted off the tenant's next rent payment.

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*.