

DECISION

Dispute Codes OPC, OPB, CNC, MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord is seeking an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by two agents for the landlord, the tenant and her advocate.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

In addition it must be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Act*.

Background and Evidence

The tenancy began on March 1, 2008 as a month to month tenancy with a current monthly subsidized rent of \$140.00 due on the 1st of the month and a security deposit of \$500.00 paid.

The landlord testified the rental unit toilet was plugged and required a plumber to come and unclog the drain. The plumber found a plastic tea cup in the toilet and the repair cost \$224.44, substantiated by the submission of the receipt from the plumber. The tenant does not dispute that she is responsible for this repair.

The landlord has submitted a copy of a 1 Month Notice to End Tenancy for Cause issued on August 16, 2010 with an effective vacancy date of September 16, 2010 citing the following causes to end the tenancy:

- The tenant is repeatedly late paying rent;
- The tenant has allowed an unreasonable number of occupants in the unit;
- The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord; and
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord acknowledged that the tenant was not engaged in any illegal activity that they were aware of and as such agreed to that this reason was not a matter of cause to end the tenancy.

The landlord provided testimony and documentary evidence that through the calendar year of 2010 the tenant was late with full rental payments at least 7 times. The tenancy agreement stipulates that rent is due *on or before* the 1st of the month.

The tenant testified that she tries to pay rent on the first day the office is open after the 1st of the month and sometimes is just not able to get to the office to pay on time.

The landlord contends the tenant has had her son and grandchildren living with her over an extended period of time. The tenant testified that she currently has two of her grandchildren staying with her while her son is dealing with some personal issues and finding a place that he can live with his children.

The landlord's agents testified that as requested by the tenant's many supporters, they have tried to work out a mutual end to the tenancy, as they are restricted in how long they can allow the tenant to live there in the over occupied unit resulting from the requirements placed on them to be eligible for their provincial funding and subsidizations.

The tenant notes that the groups supporting her are asking the landlord to rescind the notice to end tenancy not to find a mutually agreeable way to end the tenancy.

The landlord further testified that as a result of these additional occupants the other tenants have lodged complaints regarding disturbances from this unit including garbage being thrown off the balcony. The tenant testified that garbage thrown off the balcony occurred once and she cleaned it up herself and other than the babies crying she cannot figure out how she is disturbing other tenants.

Analysis

Section 47 of the *Act* allows the landlord to end a tenancy for cause including, but not limited to: repeated late payment of rent; there being an unreasonable number of occupants in a rental unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and the tenant has failed to comply with a material term of the tenancy agreement has not corrected the situation within a reasonable time.

While the landlord in this case has cited all of the above noted causes to end a tenancy, the landlord is only required to provide sufficient evidence to substantiate one of the reasons for cause to end the tenancy.

In relation to the landlord's cause that the tenant is repeatedly late in making her rental payments, the tenancy agreement is clear that rent is due on or before the 1st of the month. The fact the landlord's office is closed on the first of the month does not give the tenant the justification to pay the rent after the 1st but rather they would be required to pay prior to the 1st.

As such, regardless of any reasons provided by the tenant, I find the landlord has established that the tenant has paid rent late in 2010 at least 7 out of 10 months. Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under these provisions. As such, I find the landlord has established this cause to end the tenancy.

In addition, as confirmed by the tenant's testimony she does have additional occupants living with her that exceed the landlord's expectations for occupancy. While the phrase "an unreasonable number of occupants in a rental unit" can, in most tenancies be a subjective one, in this case the landlord and tenant are restricted further to the number of occupants by virtue of the funding and subsidization agreements they are subject to.

As a result, I find the landlord has established that the tenant has allowed an unreasonable number of occupants to reside in the rental unit. I therefore find the landlord has established a second cause to end the tenancy.

By virtue of these two causes, the landlord has also established that the tenant has breached material terms of the tenancy agreement and therefore justified a third cause to end the tenancy.

However, I find the landlord has failed to establish that the tenant or a person allowed on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Conclusion

I 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 tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$274.44** comprised of \$224.44 for repairs to the rental unit toilet and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$506.27 in satisfaction of this claim, leaving a balance of \$231.83 as the remaining security deposit.

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: October 07, 2010.

Dispute Resolution Officer