



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *OPC, CNC, MNDC, OLC, LRE, FF*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession and for the filing fee. The tenant applied to cancel the notice to end tenancy and for a monetary order for compensation. The tenant also applied for an order to suspend the landlord's right to enter the unit, an order seeking landlord's action to comply with the *Act* and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Does the landlord have cause to end the tenancy? Is the tenant entitled to compensation for loss under the *Act*?

Background and Evidence

This month to month tenancy started on March 01, 2007. The monthly rent is \$742.00 payable on the first of each month. Prior to moving in, the tenant paid a security deposit of \$362.50. The rental unit is located in an apartment building.

The landlord testified that starting in June 2010; the tenant's visitors parked in spots reserved for tenants and refused to move their vehicles when asked to do so. On June 08, one of the tenant's visitors came to the front door with a pit bull and the caretaker denied her access to the building as the building does not allow dogs. This term and condition is documented in the tenancy agreement.

The occupants of the building complained about noise disturbances from the dispute rental unit and the landlord filed two letters of complaint. The landlord also filed a log of events which contains four visits by the police including the arrest of one of the tenant's visitors.

The landlord stated that there was a flood in the building which affected six apartments. The landlord and caretaker visited the apartments located around the flood. They knocked on the tenant's door and heard the TV being turned off. Due to the noise from the ongoing construction work, the landlord opened the mail slot and called for the tenant to open the door. The tenant requested the landlord to return later. The landlord stated that upon his return, the tenant did not open the door. The tenant stated that the landlord did not return that day.

The caretaker stated that the tenant refuses to allow the landlord access to the unit despite the 24 hour notices served on the tenant. The landlord also stated that his caretaker of several years was harassed by the tenant's visitors who argued a lot with him when he requested them to move their vehicles and when he denied them entry because they were accompanied by a pit bull.

The landlord stated that despite giving the tenant two warning letters, the disruptive behaviour continued and he was left with no choice but to end the tenancy. On September 05, 2010, the landlord served the tenant with a 30 day notice to end tenancy for cause. The reason for the notice is that the tenant or his visitors have significantly interfered with or unreasonably disturbed another occupant or the landlord. Another incident occurred on September 15, which involved police action. On September 21, the landlord applied for an order of possession.

The tenant argued that he had never allowed a dog inside the building and that his witness has confirmed this in her statement. The witness stated that she was at the front door with the dog, for the purpose of buzzing the tenant to let him know she was there. She had no intention of taking the dog inside the building.

The tenant also stated that he turned down the volume of his TV when he was notified that it was causing a noise disturbance. He denied having given his visitors permission to park in tenant spots.

The tenant stated that the police had visited him on three occasions and not four as the landlord alleged. He agreed that one of his visitors was taken away in handcuffs. He stated that his niece who stayed for two weeks in his apartment had some issues that called for police intervention.

The tenant stated that he and his guests are constantly being harassed by the landlord and caretaker. He stated that they attempt to visit the rental unit without giving him 72 hours notice. He also stated that they peeped through his mail slot several times, thereby invading his privacy. He stated that the flooding emergency did not happen and therefore the landlord did not have the right to enter his unit or peep through his mail slot. The tenant also stated that the caretaker sprayed the tenant's niece with water from a garden hose when she came by to visit the tenant. The caretaker denied this.

The tenant stated that repairs were carried out through three months in the summer. On a daily basis, this work started by 7:30 a.m. thereby causing noise disturbances for the tenant and disrupting his quiet enjoyment of the unit. The landlord argued that the work was carried out between the hours permitted by the local city authority.

The tenant has applied for a monetary order in the amount of \$1,500.00 as compensation for the violation of his rights as a tenant, the alleged criminal behaviour of the landlord and caretaker (peeping through the mail slot) and for the alleged lie by the caretaker regarding her statement that the police were looking for the tenant.

The tenant has also applied for an order to suspend the landlord's right to enter the rental unit by changing the locks at the landlord's expense and not providing him with a key.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant or his visitors have significantly interfered with or unreasonably disturbed another occupant or the landlord. In this case, I find that the landlord has proven that the tenant and/or his guests have caused problems which called for police involvement on at least three occasions. The landlord put the tenant on notice by serving him with warning letters on August 07 and September 05, 2010. The landlord also served the tenant with a notice to end tenancy on September 05. Despite the warnings and the notice to end tenancy, the disruption continued and the police were called again on September 15, 2010. The landlord has also filed letters of complaint from other building occupants.

Based on the testimony of both parties, I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy. The landlord agreed to allow the tenant to stay an additional month and requested for an order of possession for November 30, 2010. Pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00 p.m. on November 30, 2010. The Order may be filed in the Supreme Court for enforcement. Since the landlord has proven his case, he is entitled to the filing fee of \$50.00. The landlord may retain this amount from the security deposit.

The tenant has applied for compensation for the violation of his rights as a tenant, loss of quiet enjoyment and harassment on the part of the landlord and the caretaker. The tenant is also claiming compensation for the noise disturbance from the construction work that was carried out during summer. He also stated that the landlord peeped through his mail slot and did not provide him with 72 hours notice of entry. Based on the testimony of both parties, I accept the landlord's testimony that he opened the mail slot to call out to the tenant as his knocking may have been mistaken for the construction work in progress at the time.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

I find that the tenant may have been inconvenienced while the construction work was in progress, but temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Pursuant to section 29 (b) of the *Residential Tenancy Act*, the landlord may enter a rental unit if he has provided the tenant with at least 24 hours notice. Therefore the landlord was within his rights when he requested entry to the unit after serving the tenant with a 24 hour notice to enter.

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”. As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment.

Based on the testimony of both parties, I do not find that the landlord engaged in behavior that fits the definition of harassment.

Accordingly, I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment and therefore must also bear the cost of filing this application. Since the tenancy is ending, it is no longer necessary to address the tenant’s application to suspend the landlord’s right to enter the rental unit.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p. m. on November 30, 2010**. The landlord may retain \$50.00 from the security deposit towards the recovery of the filing fee. The tenant’s application is dismissed in its entirety.

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 21, 2010.

Dispute Resolution Officer