



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Landlord OPC
 Tenant CNC, AAT, LAT, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed seeking an Order of Possession for Cause

The Tenants filed to cancel the Order of Possession for Cause, to restrict the Landlord's access to the rental unit and to change the locks of the rental unit.

Service of the hearing documents by the Landlord to the Tenant were done by on October 14, 2010 by personal delivery in accordance with section 89 of the Act. The Tenant confirmed receipt of the Landlord's hearing package.

Service of the hearing documents by the Tenant to the Landlord was done by personal delivery on October 3, 2010 in accordance with section 89 of the Act. The Landlord confirmed receipt of the Tenant's hearing package.

The parties appeared, gave affirmed testimony, they were provided the opportunity to present their evidence orally and in written document form.

This hearing was adjourned from November 2, 2010 as the Landlord's file was not sent to the Dispute Resolution Officer for the November 2, 2010 conference call. Testimony was heard from both the parties on November 2, 2010 and November 29, 2010.

Issues to be Decided

Landlord:

1. Does the Landlord have grounds to end the tenancy?

Tenant:

1. Is the Tenant entitled to restrict the Landlord's right of entry into the rental unit?
2. Is the Tenant entitled to replace the locks on the rental unit?

Background and Evidence

This tenancy started on March 1, 2010. Rent is \$550.00 per month payable in advance on the 1st day of each month. There is no security deposit involved in this tenancy.

The Tenant said the Landlord has fabricated the claims against him. He said the police incident that the Landlord said was because of him, actually dealt with other tenants in the building. The Tenant provided a police letter that said they could not release information to him as he was not named in the police report. The Tenant said this proved that he was not the cause for this police incident. The Tenant continued to say that the F. brother who lived in unit 301 were the cause of most of the trouble in the building and now that they have moved out there has been no more incidents with the police.

In addition the Tenant said that he did not hit the Landlord in the hand and he presented a witness to testify that he did not hit the Landlord. The witness B.N. testified that he did not see the Tenant hit the Landlord in the garden as the Landlord said he did. The Tenant said this was proof that he did not hit the Landlord.

The Tenant said he gets along well with the other tenants in the building and he is not noisy and he has not received any complaints from the other tenants. He said that he was noisy one night as it was his birthday and he had guess over for approximately 11/2 hours, but he did not hear of any complaints.

The Tenant said he wants the Notice to End Tenancy for Cause to be cancelled as he said the Landlord has fabricated her claim to evict him because she doesn't like him. As well he said that the Landlord doesn't give him proper notice when she enters his unit therefore; he is requesting an Order to restrict the Landlord entering his unit and he is requesting an Order to change the locks on the door of his rental unit.

The Landlord said she is very frustrated with this tenancy as she believes the Tenant is trying to "give her a nervous breakdown" and he has said he is trying to take her "power away". She said the tenant hit her hand in the courtyard although she said she had no witnesses to prove this happened. She continued to say that she believed the police issues were caused by the Tenant and she submitted a written statement by D.W. sighting one of the F. Brothers and the Tenant as the cause of the incident. The Police letter indicates that the Tenant was not involved in the police report.

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The Landlord continued to say that she has a number of other complaints about the Tenant for loud and intoxicated behaviour, but she said that the witnesses were not available for the conference call. She said she provided her written statement regarding complaints about the Tenant. In the November 2, 2010 testimony the Landlord provided a witness that under questioning said that the Landlord actually call the Tenant names and yelled at him and the Tenant said he would take the Landlord's power away, but the Witness thought the Tenant said it jokingly.

The Landlord also said the Tenant gave her coffee table away which amounts to a loss or damage to the Landlord's property. The Tenant said that he did trade the coffee table with the F. Brothers in the neighbouring rental unit and when they moved out they took the table. He said he is not responsible as the Landlord supervised their move out.

The Landlord said she is very frustrated with this tenancy and she wants it to end.

Analysis

The Landlord issued a Notice to End Tenancy for Cause, because she said the Tenant significantly or unreasonably disturbed other tenant or the landlord and put the well being, safety and security of other tenants and the landlord at risk. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent and in this case the burden of proof is not met. I find that the Landlord has not established proof that the Tenant has caused significant or unreasonable disturbances. In fact the Landlord's witness testified on November 2, 2010 that the Landlord yelled at the Tenant not the Tenant yelling at the Landlord. As well the Tenant has documented evidence that he was not the cause for any police incident and there has been no police incidents involving him since the F. brother moved out. The written statement provided by the Landlord from D.W. also names R.F. one of the F. brothers as the cause for the incident and although the tenant is named in that statement he is not named in the police report. I find for the Tenant and cancel the Notice to End Tenancy for Cause dated September 23, 2010 and I dismiss the Landlord's application for an Order of Possession dated October 14, 2010 with leave to reapply.

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With Regards to the Tenant's application to restrict the Landlord's access to the rental unit; I Order the Landlord to give the Tenant 24 hour written notice before she enters the Tenant's rental unit. The Tenant's application for changing the locks on the door is dismissed with leave to reapply as the Tenant did not prove the Landlord has entered his rental unit or other tenant's units without notice or authority to enter the unit.

Conclusion

I dismiss the Landlord's application for an Order of Possession, with leave to reapply and I Cancel the Notice to End Tenancy for Cause dated September 23, 2010. I order that the Tenancy continues on the same basis as it is now.

I Order that the Landlord give the Tenant 24 hour written notice prior to entering the Tenant's rental unit

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*.
