



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, CNC, OLC, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenant applied to cancel a One Month Notice to End Tenancy for Cause.

The Landlord applied for an Order for Possession ending the tenancy for cause and to recover the filing fee for the Application.

The Tenant, an occupant of the rental unit, the Tenant's Advocate, the Landlord and her witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I note that the occupant's name is listed on the Tenant's and the Landlord's application, but he is not listed on the tenancy agreement and I have not considered him a party for the purpose of this Decision.

Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the One Month Notice to End Tenancy for Cause?

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order for Possession and to recover the filing fee?

Background and Evidence

This tenancy began on October 1, 2010, on a month to month basis. Monthly rent is \$800.00 and a security deposit in the amount of \$400.00 was paid during the tenancy.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on November 12, 2010, which was dated incorrectly, and subsequently issued an amended 1 Month Notice to End Tenancy for Cause (the "Notice") to the Tenant on November 16, 2010, by posting on the door, with a stated effective move out date of December 31, 2010. The Notice listed as cause that the Tenant had put the Landlord's property at significant risk and has caused extraordinary damage to the rental unit.

Pursuant to the Rules of Procedure, the Landlord proceeded first in the hearing to explain why the Notice had been issued.

I heard relevant testimony from the Landlord that almost immediately after the tenancy began, the Tenant asked her if she, the Tenant, could make improvements to the rental unit. The Landlord testified that she gave an emphatic no as the answer. The Landlord stated that against her instructions and contrary to the rental agreement, the Tenant and occupant began making alterations to the rental unit, including wiring the outdoor shed with no permits, punching holes in the walls, taking out walls to put a window in and re-wiring to install baseboard heaters, all without permission and against her explicit instructions to not do so. The Landlord stated that the outdoor shed was a kennel from long ago, but that the Tenant and occupant converted the shed to the occupant's living space.

The Landlord testified that a by-law officer came by to inspect the rental unit and afterwards issued a letter telling the Landlord that the shed being used as a dwelling was in violation of the zoning laws and that legal action would be taken if the occupancy continued.

The Landlord testified that the fire marshal also issued a cease and desist order to the Landlord regarding the electrical alterations to the shed and house.

The Landlord testified that the Tenant had significantly put her property at risk by rewiring the house and wiring the shed.

The Landlord stated that each time she attempted to discuss these alterations and violations with the Tenant, she received abusive and threatening emails from her.

The Landlord's Agent, her property manager, gave relevant testimony that she instructed the Tenant at the beginning of the tenancy that she, the Tenant, could not alter the rental unit, but that the Tenant did not appear to listen and did so anyway.

The Landlord's Agent, also testified that she was a witness to the renovations.

The Landlord's Agent, RL, testified that he was a witness to the renovations, and that he was told by the Tenant that they did so to make the shed habitable.

The Tenant, through her advocate, testified that there was existing power to the shed and that when the municipality cut the electricity to the shed, she was told by the municipality she could still run an extension cord.

The Tenant claims that she had the right to decorate the rental unit in any manner they wanted and stated that she didn't get permission from the Landlord to "fix" the rental unit as it was the right thing to do as a Tenant.

The Tenant stated that any work done was to improve the rental unit, not renovate it, and that the rental unit could be put back to the original condition after she moved.

The Tenant stated that the work she did was due to the deficiencies in the rental unit, but upon query, admitted that she had not asked the Landlord to correct any problems. The Tenant further stated that the window she put in was due to a piece of aluminum being ripped off, but that the window was not screwed in and could be removed at the end of the tenancy.

In response, the Landlord testified that the Tenant inspected the premises prior to signing a lease and accepted the premises as is.

Analysis

Based on the above the testimony and evidence, and on a balance of probabilities, I find as follows:

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

Relevant to this hearing, the Notice was issued pursuant to section 47(1)(d)(iii) of the Act, which states that a landlord may issue a notice to end tenancy if the tenant puts the landlord's property at significant risk.

It appears, on a balance of probabilities, it is much more likely than not that the Tenant has re-wired the rental unit and outdoor shed, in violation of the city code, without permission, without permits and against the Landlord's warnings. In support of this, the Tenant acknowledged the alterations to and wiring of the rental unit, but considered these improvements.

I find that this action by the Tenant created a serious fire risk and hazard and placed the Landlord's property at significant risk. I therefore find that the Landlord has proven her cause to end the tenancy and find the Notice is valid. The Landlord is entitled to an order of possession effective the date listed on the Notice at **1:00 p.m. on December 31, 2010**, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of the **\$50.00** fee paid by the Landlord for this application.

I order that the Landlord withhold **\$50.00** from the security deposit of \$400.00, in satisfaction of the claim, and that the balance be addressed at the close of the tenancy, in accordance with the Act.

As the tenancy is ending, I dismiss the Tenant's requests for orders against the Landlord. I further find the Tenant had insufficient evidence to prove any other portion of her claim and dismiss the Application in its entirety.

Conclusion

The Tenant's Application for Dispute Resolution is dismissed as the Notice to End Tenancy issued is valid and may be enforced.

The Landlord is granted an Order of Possession and may keep \$50.00 of the security deposit in satisfaction of the claim.

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: December 13, 2010.

Dispute Resolution Officer