



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC OPB FF
 MT DRI

Preliminary Issues

Landlord's Application

After I explained what a request to End Tenancy Early and Obtain an Order of Possession (ET) was the Landlord confirmed she made an error on her application for dispute resolution when she checked that request off and requested that I amend her application not to consider a request for an ET.

The Landlord requested to amend the 1 Month Notice to End Tenancy to include reasons that the Tenant has engaged in illegal activities. She advised that on December 6, 2010 the Tenant was arrested and is now prohibited from attending his own or any other rental units in the house.

Tenant's Application

The Tenant confirmed he had filed an amended application and that on his copy there were several boxes checked off in relation to his comments made under the details of his dispute. He advised that the request for more time was to be cancelled and we were to discuss the numerous breaches of the Act caused by the Landlord in addition to his request to dispute an additional rent increase. I had the Landlord read the items selected on the copy of the Tenant's application for dispute resolution that she was served and I note that the copy sent to the Landlord had different items selected for the nature of the dispute than that on the copy filed at the *Residential Tenancy Branch* or what was read by the Tenant during his testimony.

Introduction

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

The Landlord filed seeking an Order of Possession for cause and breach of an agreement and to recover the cost of the filing fee from the Tenant for this application.

The Tenant filed seeking more time to make his application and to seek an Order to dispute an additional rent increase.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, sent via registered mail to the three different addresses known for the Tenant. The Tenant confirmed receipt of the hearing package and copies of the Landlord's evidence.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, sent via registered mail. The Landlord confirmed receipt of the Tenant's hearing documents and evidence.

The Landlord and Tenant appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession as a result of that breach?
3. Has the Landlord implemented an illegal rent increase?

Background and Evidence

I heard undisputed testimony that the parties entered into a written tenancy agreement effective August 1, 2010. Rent is payable on the first of each month in the amount of \$450.00 and a security deposit of \$225.00 was paid on July 29, 2010 by the Tenant.

The Landlord testified that she rents out the upper and lower floors of the rental house and enters into separate tenancy agreements for each bedroom. She states the upper tenants share the kitchen, living room and bathroom while the two lower tenants share the lower kitchen and bathroom. The Landlord confirmed receipt of the Tenant's December 2010 rent in advance on November 24, 2010. The Tenant paid \$450.00 for rent plus \$50.00 towards the excess utility costs.

The Landlord advised that after receiving a couple of noise complaints about this Tenant and several complaints from a long term tenant about not getting along with the Tenant the Landlords issued a 1 Month Notice to End Tenancy for cause on November 25, 2010. The Notice was issued for reasons that 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 1 Month Notice was posted at the rental unit on November 25, 2010. After receiving the 1 Month Notice the Tenant called and spoke with the male Landlord and requested to mutually end the tenancy effective November 30, 2010 if the Landlords agreed to return his damage deposit and the \$500.00 he paid towards December rent and utilities. They met the next day around 9:30 a.m. where the Landlord gave the Tenant his security deposit of \$225.00 plus the \$500.00 in cash. She stated that because she had withdrawn the cash from a bank machine she did not have exactly \$725.00 so she gave the Tenant \$740.00 and had him sign the agreement to end the Tenancy which documents the payment of cash. The document was witnessed by a person chosen by the Tenant.

November 27, 2010 the Landlords received a voice message from the Tenant advising them he had changed his mind. He stated that he would be staying in the rental unit and will be making an application for dispute resolution and that he was fully aware that he needed to pay his rent while he was awaiting the outcome of the dispute resolution process. When the Tenant failed to repay the December 2010 rent and security deposit that had been refunded to him November 26th, 2010, the Landlords issued a 10 Day Notice to End Tenancy on December 2, 2010 and posted it to the Tenant's door.

On December 6, 2010 an incident occurred whereby the Tenant was arrested for an incident of being in the upper rental unit unlawfully. He was charged and issued an Order not to attend his or any other rental unit in the building until after his February court date. The Tenant's possessions remain in the rental unit. The Landlords are seeking an immediate Order of Possession so they can have the Tenant's possessions removed and they can re-rent the unit as soon as possible.

The Tenant testified that he did not sign the mutual agreement to move out at the end of November 2010. He states his evidence proves he paid his December 2010 rent in advance and he states the Landlords did not return the rent to him. He referenced the copy of the tenancy agreement he provided in evidence and argued the Landlords altered the copy of the tenancy agreement they provided in their evidence to show the tenancy as a month to month tenancy and not the fixed term ending August 2011 which may switch to a month to month tenancy afterwards, as noted on his copy. He states the Landlord provided false statements when she testified the lower suite shares only the kitchen and bathroom between the two rooms as she failed to mention the lower two bedrooms share the laundry facility with the upper tenants and the laundry machines are located in the upper unit.

The Tenant confirmed receipt of the 1 Month Notice to End Tenancy and the 10 Day Notice to End Tenancy. He confirmed that he received noise complaints with the first being prior to Halloween and the second being on Halloween. He acknowledged the police were called for the noise complaint and he spoke with the other tenants

afterwards requesting they spoke to him about the noise and not call the police. There was another noise complaint just prior to him receiving the 1 Month Notice. He is of the opinion the Landlords are trying to evict him and withhold his rent and deposit because of his complaints about the sewer system. He states the Landlords have committed a serious breach of the Act by not repairing the broken sewer pipe. He referred to the photo of the pipe in question and pointed out stains to the concrete. He argues there was sewage all over the floor which ran under the wall that he cleaned up with bleach.

The Tenant states the incident on December 6, 2010 was simply the result of the upper tenant having an anxiety attack because he was using their phone to call the maintenance person to complain about the sewer smell. He states he was entitled to go in the upper suite as per his tenancy agreement and the police refused to believe he lived there and would not look at his tenancy agreement the day he was arrested and charged with being unlawfully in a dwelling.

In closing the Landlord stated the December rent and security deposit are not paid as they were returned to the Tenant as part of the mutual agreement to end the tenancy. A long term tenant has since moved out of the rental building for fear this Tenant would become physical, as noted in his letter in the Landlord's evidence. The police obviously know where the Tenant lives as they have attended there on several calls. It is evident that the police feel the Tenant is a threat as they have issued orders for him not to attend the rental building or his own unit. In response to the Tenants comments about the sewage system the Landlord confirmed they had a problem with tree roots partially blocking the sewer pipes but that was back in August 2010. They have since had the pipes augured and continue to maintain the system as required. They have plans to conduct additional maintenance in the spring however this is not an emergency situation nor has there been sewage all over the floor. She states that she never altered the tenancy agreement; rather she believes the Tenant altered it in hopes to have his tenancy continue. The remaining tenants have complained to the Landlords about multiple issues over the past few months and they all involve this Tenant. The Landlord is requesting an immediate Order of Possession.

The Tenant advised that this scenario all starts with the plumbing problem and his complaints to the maintenance person and the Landlords. He argues this is not a maintenance issue and requires immediate attention by the Landlords for health and safety reasons. He acknowledges his arrest and is of the opinion it is simply a result of the upper tenant having an anxiety attack and so he simply left her unit even though he is entitled to be in the upper unit to do his laundry. He requests that I allow him to continue his tenancy so that he can request an alteration to his no contact order to allow him to return to his residence.

The Landlord stated the Tenant was not in the upper unit to do laundry as he had no laundry with him, he was found standing in the living room of the upper unit, and the laundry is located in the kitchen which is completely separate from the living room area.

Analysis

Each participant submitted a voluminous amount of documentary evidence to the *Residential Tenancy Branch*, all of which has been carefully considered, along with the testimony, in making my decision.

The evidence supports the Tenant filed his initial application with the *Residential Tenancy Branch* on November 30, 2010. The document was signed and initially dated November 26, 2010, which was changed to November 29th, 2010. An amended application was filed by the Tenant and received at the *Residential Tenancy Branch* December 2, 2010 for the following reasons: 1) Allow a tenant more time to make an application to cancel a notice to end tenancy, 2) Dispute an additional rent increase, and 3) a notation which cancels the Tenant's request to serve documents or evidence in a different way. I accept the Tenants argument that his application was also related to his statement of "numerous violations of residential tenancy agreement by landlord and his wife. Major violation of residential tenancy by irresponsible tenant...." There is no

evidence to support the Tenant amended his application further to request to cancel either the 1 Month or 10 Day notices to end tenancy.

A significant factor in my considerations is the credibility of the testimony. I am required to consider the testimony not on the basis of whether it “carried the conviction of the truth”, but rather to assess this evidence against the consistency with the probabilities that surround the preponderance of the conditions before me.

As per the aforementioned, I accept the evidence before me that the Tenant has failed to amend his initial application to request to cancel either the 1 Month Notice to End Tenancy or the 10 Day Notice to End Tenancy within the required timeframes set out in the Act. Based on the foregoing, I find that the Tenant is conclusively presumed under sections 46(5) and 47(5) of the Act to have accepted that the tenancy ended on the effective date of each Notice.

That being said, upon review of the 1 Month Notice to End Tenancy and the affirmed testimony pertaining to the 10 Day Notice to End Tenancy, I find both Notices to be completed in accordance with the requirements of the Act and I find that they were served upon the Tenant in a manner that complies with the Act. After careful consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing both Notices; therefore I hereby grant the Landlord an Order of possession.

As the Landlords have been successful with their application I award recovery of the \$50.00 filing fee from the Tenant.

With respect to the Tenant’s application I do not accept his testimony that the Landlords were evicting him simply because he had been complaining about the sewer problem. I note that the majority of the Tenant’s evidence pertaining to complaints about a sewage problem were created after the 1 Month Notice had been issued. There is insufficient evidence before me to support the Landlords have failed to attend to an alleged problem and there is insufficient evidence to support emergency repairs are required for

health and safety reasons. Based on the aforementioned I dismiss the Tenant's application in its entirety.

Conclusion

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

A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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 21, 2010.

Dispute Resolution Officer