



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, FF, LAT, RR

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy, a request for an order authorizing the tenant to change the locks of the rental unit, a request to allow the tenant to reduce the rent, and a request for recovery of the filing fee.

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue, to be dealt with together.

I therefore will deal with request to cancel the Notice to End Tenancy, the request to change the locks, and the request for recovery of the filing fee, and I dismiss the request for rent reduction, with liberty to re-apply.

Background and Evidence

On March 6, 2011 the tenant was served with a one month Notice to End Tenancy for cause which stated: “tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord”

The landlord testified that:

- There is no written tenancy agreement in place however this unit was advertised as a non-smoking suite, but both the tenant and her boyfriend smoke in the rental unit.
- The tenant has threatened her and stated that she would break her legs if she ever touched her door handle again.
- There are numerous loud fights between the tenant and her boyfriend, filled with a large amount of profanity and she finds this behaviour very disruptive as she lives right above the tenants.
- The tenant screams profanities at her whenever she accidentally drops something or makes any noise above the tenant.
- The tenant even called the police on her and accused her of going into her home; however I have never gone into her home without giving the proper notice.

The landlord therefore requested this Notice to End Tenancy be upheld.

The tenant testified that:

- She does not smoke, as she quit 11 years ago, and her boyfriend only smokes outdoors, there is never any smoking in the house.

- She does have some fights with her boyfriend due to the stress caused by this landlord however they are not excessively loud or laced with profanity.
- She has never threatened to break the landlord's legs, the only threat she has ever made was to take the landlord to dispute resolution.
- She did call the police because she believed that the landlord had been going into her rental unit, although she has never actually seen the landlord enter her rental unit. She knows the landlord has entered though because she has put paper in the door that would fall if the door opened.
- The landlord never does give proper notice to enter, she has asked some times for permission to enter and I have allowed it.
- I never yell or swear at the landlord if she drops something on the floor because I know that she has the right to live a normal life just as I do.
- The landlord is simply fabricating all these claims because she is upset that I refuse to pay an extra \$50.00 in rent that she wants me to pay.
- She gets numerous harassing phone calls from the landlord asking for more rent.

Analysis

It is my decision that the landlord has not met the burden of proving the reasons given for ending this tenancy. The burden of proving the reasons for ending a tenancy lies with the landlord and when it is just the landlord's word against that of the tenant that burden of proof is not met.

In this case it is basically just the landlord and her daughter's word against that of the tenant and that is not sufficient to meet the burden of proving the claims. The landlord has supplied no independent evidence to support the claim that the tenant has significantly interfered with or unreasonably disturbed the landlord.

Therefore it is my decision that I will cancel the Notice to End Tenancy and this tenancy continues. I further order recovery of the \$50.00 filing fee, the tenant may therefore deduct \$50.00 from her next rental payment.

I will not however issue an order allowing the tenant to change the locks to the rental unit, because the tenant has not met the burden of proving her claim that the landlord has been entering her rental unit without permission.

Conclusion

I hereby cancel the one month Notice to End Tenancy, dated March 6, 2011, and this tenancy continues.

I further order that the tenant may deduct the \$50.00 cost of the filing fee from future rent payable to the landlord.

I dismiss the request to change the locks.

I dismissed with leave to reapply, the claim for a rent reduction.

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: March 30, 2011.

Residential Tenancy Branch