



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

CNC, FF

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for cause and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord. The landlords' agent confirms receipt of the hearing documents on March 10, 2011.

The tenant appeared and two agents for the landlord. Both Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

Background and Evidence

Both parties agree that this tenancy started on January 01, 2007. This started as a fixed term tenancy but has reverted now to a month to month tenancy. Rent for this unit is \$800.00 per month which is due on the first of each month.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy for cause on February 22, 2011 by posting the Notice to the tenants' door. This Notice gave three reasons to end the tenancy as follows:

1. The tenant or a person permitted on the property by the tenant has:
 - a) put the landlords property at significant risk
2. The tenant has caused extraordinary damage to the unit or property
3. The tenant has not done required repairs of damage to the unit.

The landlord testifies that on January 16, 2011 he received concerned calls from other tenants about a disturbance at the building and the police had been called. On January 17, 2011 he attended the building and carried out a tour of the building. At the tenants front door it was noticed that there was a waxy residue on the door and outside the building under the tenants window it was noted that there was a lot of debris on the grass. The landlord testifies that on January 17, 2011 the tenant notified him that there was something wrong with his lock and he invited them to look at it. The landlord states he went to the tenants unit with his technician and took the lock apart. At that time it was noted that the lock appeared to have been pried open and was now useless. During this visit the tenant told the landlord that he had to break a window to gain entry to his unit as a girl had locked him out of his unit and the lock had become damaged. The landlord states the tenant told him he would have the window repaired at his own cost.

The landlord testifies that he returned to the unit on January 20 and January 26, 2011 but the window had not been repaired at that time so the landlord states he had to issue the tenant with the Notice to End Tenancy. The landlord testifies that the broken window was a security risk as anyone from outside could gain access to, not only the tenants unit, but also the rest of the building. The landlord requests that the Notice to End Tenancy is upheld and seeks an Order of Possession to take effect on April 10, 2011.

The tenant testifies that he had a girl at his unit but he 'kicked' her out on January 15, 2011. He states he went away for a while and when he came back he found the lock to his front door had been vandalised. He states he could not get into his unit so had to break a window to gain entry. The tenant states he has paid to have the lock fixed and the window was replaced on or about March 12, 2011.

The tenant testifies that the person who damaged his lock was not an invited guest of his to the building. He states the lock on the entrance to the building has been broken for some time and the building is not secure so anyone can gain entry. The tenant states the landlord knew this lock at the entrance was defective but did not repair it. The tenant states he has not been involved in any other incidents such as this before.

The landlord testifies that it is not necessary to have a lock on the entrance to the building. He states the tenant still owes \$60.00 for the replacement lock for his door and neither agent can confirm or deny that the window has been replaced. The landlord states that they have had difficulties with the tenant before when he has allowed guests in his unit. The landlord agrees the tenant has not been served with either a Notice to End Tenancy or a breach letter in the past and only a verbal warning has been given about noise.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I agree that the tenant did cause some damage to his rental unit when he broke his window to gain entry to his unit. However, the tenant has now repaired this damage and as there is no longer any damage to his unit that would be deemed to be significant I find this is not sufficient cause to end the tenancy. I also find that as the front entrance door lock is defective the landlord's argument that this broken window made the rest of the building unsecure to have little merit.

With regard to the broken lock on the tenant's unit; a tenant is only responsible for invited guests to his unit or common areas. As the tenant testifies that this person was not an invited guest and the landlord has provided no evidence to show otherwise. The tenant would not be responsible for this person's actions particularly as this person was able to gain access to the building through the front entrance due to the defective lock.

I also find this is the first incident concerning this tenant that has warranted a Notice to End Tenancy and no other Notices or breach letters have been served upon him. Consequently, I find the reasons given on the One Month Notice have not been sufficiently proven to have put

the landlords property at significant risk or that the tenant has caused extraordinary damage to the unit or property and the tenant has not done required repairs of damage to the unit. Therefore the Notice to End Tenancy is cancelled.

Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated February 22, 2011 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, he is entitled to recover his **\$50.00** filing fee for this proceeding and may deduct that amount from his next rent payment when it is due and payable to the landlord.

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