



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for cause, and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Both parties attended the conference call hearing, provided affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The parties also provided evidence packages in advance of the hearing. A package provided by the tenant was not provided within the time provided under the Rules of Evidence, however, with the landlord's consent, all evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began in 2004 and the tenant still resides in the rental unit. Rent in the amount of \$685.00 per month is payable in advance on the 1st day of each month in addition to \$30.00 per month for parking. The parties agree that a security deposit was paid, being half of a month's rent at the beginning of the tenancy, but neither party was able to testify to the exact amount collected by the landlord at the outset of the tenancy.

The landlord testified that on October 15, 2010 the tenant was served with a notice of rent increase, and feels the tenant has caused some stressful events as a result. He stated that the tenant gave a false report to the fire hall about a leak in the ceiling on the

3rd floor on October 18, 2010. On February 14, 2011 the tenant made a false report to the fire hall that the fire alarm was not functional. A copy of pages 1 and 4 of the Fire-Rescue Services Inspection Notice dated February 14, 2011 as well as a copy of a Certificate of Electrical Inspection dated March 11, 2011 were provided by the landlord in advance of the hearing.

The Fire-Rescue Services Inspection Notice states that the investigator attended to a complaint of water dripping through exit signs, and that the fire alarm is not working, was investigated on February 14, 2011 and that the investigator met with the manager. Page 4 of that document states that, "All visual indications are that the fire alarm is functional. There was no precipitation and I did not observe any water leaking on the 3rd floor at the time of my visit." Pages 2 and 3 were not provided.

The Certificate of electrical Inspection states that the investigator received a report from the fire Services Department regarding large amounts of water flowing from a leaking roof into the electrical fixtures within the building, and no evidence of water seepage was found.

On March 18, 2011 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which was provided in advance of the hearing. The notice is dated March 18, 2011 and contains an expected date of vacancy of April 30, 2011. The notice states that the reason for ending the tenancy is: "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 further testified that the tenant had previously applied for dispute resolution claiming a monetary amount of \$1,000.00 for excessive leaking from the roof and lack of repairs, which was dismissed by the Dispute Resolution Officer. A copy of the application was provided in advance of the hearing and it also includes an application disputing an additional rent increase, for an order that the landlord make emergency repairs for health or safety reasons, that the landlord make repairs to the unit, site or property, for an order that the landlord provide services or facilities required by law, and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, all of which were dismissed. He also pointed out that the Dispute Resolution Officer found that, "The tenant did not provide evidence of any communication with the landlord requesting repair of the roof, any evidence that the health or safety of the occupants has been placed at risk, or any evidence that the landlord has failed to comply with health, safety or housing standards required by law."

The landlord feels the tenant made the complaints to the fire department as a result of some animosity which started when the landlord served the tenant with a notice to

increase the rent. He stated that the tenant “went over his head” by making the complaints to the fire department and having the electrical department involved, which actions caused the landlord to have to deal with the authorities, thereby significantly interfering with or unreasonably disturbing the landlord because the accusations and the reports made by the tenant were unfounded.

The tenant testified that the landlord did not tell her when he served her with the notice to end tenancy why it was being issued. She further stated that the landlord issued the notice right after the previous dispute resolution hearing.

The tenant also testified that the landlord left a note on her door dated April 8, 2011 containing some personal information and accusations, as well as other notes that were left by the landlord or some unknown person who she believes did so at the landlord’s request. Copies of those notes were provided in advance of the hearing. One of those notes is quite threatening which states: There are people here watching you and Tom, and we will not put up with it. Have a nice day.”

The tenant further testified that the fire alarm was hanging from the ceiling in the common area and buckets were placed in the building lined up in the hall, and as a result, she was concerned.

Analysis

In the circumstances, I find that the tenant had cause to call the fire inspector, and that the landlord did not have cause to issue the notice to end tenancy. The landlord’s evidence that he was disturbed by the tenant’s reports which required him to deal with authorities, and that the tenant went over his head rather than communicating with him about the problems. It’s clear in the evidence that communication has broken down between the parties.

With respect to the tenant’s application for a monetary order for loss of quiet enjoyment, I have the evidence of the parties about notes being left on the tenant’s door, but I do not have any evidence of who actually put the notes on the door, other than one by the landlord. Although I find this practice to be unprofessional, I do not find that the tenant has suffered any damages as a result. The tenant’s application states that the landlord defamed her, however has not provided any evidence of how that may have affected her.

In determining “cause” for eviction, I refer to the Residential Tenancy Policy Guideline #6 which states that, “... A landlord does not have a reciprocal right to quiet enjoyment.” Although I am not bound by the guideline, I find that it is just in the circumstances.

Further, the *Residential Tenancy Act* states that during a tenancy, a landlord must post and maintain in a conspicuous place or give to the tenant in writing the name and phone number of a person the tenant is to contact for emergency repairs. Although I have no evidence before me that the tenant had a phone number, I am satisfied in the evidence that the tenant did know how to get ahold of the landlord. I agree with the landlord that the tenant ought to have contacted him first before calling the fire department, but I do not agree that it is a reason to end a tenancy.

Conclusion

For the reasons set out above, the notice to end the tenancy is hereby cancelled.

I further order that the landlord comply with the *Residential Tenancy Act* by allowing the tenant quiet enjoyment of the rental unit. The landlord must refrain from placing notes on the tenant's door of a personal nature. The landlord may only place notices described in the *Residential Tenancy Act* on the door of the rental unit.

I further order that the tenant comply with the *Act* by communicating concerns in writing to the landlord prior to calling other authorities.

I further order the parties to communicate in writing only.

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: April 26, 2011.

Residential Tenancy Branch