



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, RP

Introduction

This is an application by the Tenant to cancel a notice to end tenancy for cause, a request for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and seeks action by the Landlord to comply with the Act, regulation or tenancy agreement and make repairs.

Both parties appeared at the hearing by conference call and gave affirmed testimony.

During the hearing the Tenant gave notice of withdrawing her claim for a monetary order and to have the Landlord make repairs to the unit, site or property.

Issue(s) to be Decided

Is the Tenant entitled to have the notice to end the tenancy for cause cancelled?
Is the Tenant entitled to an order to have the Landlord comply with the Act, regulation or tenancy agreement?

Background and Evidence

Both parties have attended the hearing and have referred to each others evidence packages.

This Tenancy began on June 1, 2007 on a month to month basis as shown in the submitted copy of the signed tenancy agreement.

The Landlord has provided letters from various other Tenants in the building complaining of loud noises and disturbances from the Tenant for the Landlord's cause of interfering with or disturbing another occupant. The Tenant disputes this stating that the letters were obtained under duress subject to a letter issued by the Landlord to all of

the building occupants that if they disagree with the Landlord, “for those of you who disagree with my decision, you are free to give me notice to vacate and I can emphasize with your decision.” The Tenant has a witness, P.H. who has stated that he felt threatened when he received this letter from the Landlord that he would be targeted for eviction if he disagreed. The witness stated that he participated in a conversation with the Landlord and the building caretaker when he overheard them talking about the Tenant 1-2 days prior to the letter being received.

The Landlord selected 3 other reasons for cause. Seriously jeopardizing the health or safety or lawful right of another occupant or the landlord, putting the landlord’s property at significant risk and the Tenant has engaged in illegal activity that has , or is likely to adversely affecting the quiet enjoyment, security safety or physical well-being of another occupant or the landlord. The Landlord states that he believes that the Tenant is responsible for various occurrences including a break-in and people being let into the building afterhours. The Landlord has not provided any evidence to support these allegations or provide any information of illegal activity at the rental unit by the Tenant. The Tenant has disputed these issues, stating that she is not a criminal but a victim.

The Landlord claims that the Tenant has assigned or sublet the rental unit/site without the Landlord’s written consent. The Tenant disputes this stating that she received verbal permission from the Landlord for her son to live with her. The Landlord disputes having given permission to the Tenant. The Tenant cites the notice of a rent increase issued by the Landlord issued November 30, 2010 citing the Tenant’s son as a Tenant. The Landlord states that he did not have time to evict the Tenant’s sooner for this reason. The Landlord states that he has been aware of the Tenant’s son living in the unit for approximately 2 ½ years. The Tenant states that it’s been since December 23, 2007 since her son moved in.

The Tenant has stated that the cause of the two break-ins were the result of the lattice work around the building and is seeking an order to have the Landlord remove them. The Landlord states that the lattice work has been in place for over 20 years and this is the first time there has been an issue with them. The Landlord points out that access of climbing the lattice work was from climbing onto a bench, which is shown as broken in the Landlord’s evidence in gaining access to the rental units. The Landlord has stated that this bench and other items have been removed from the area and the lattice work is too “flimsy” to properly use as a ladder.

Analysis

As both parties have attended the hearing and have made reference to each others evidence packages, I am satisfied that each has properly received the evidence packages and the Landlord has been properly served with the notice of hearing documents. Neither party has disputed the service of documents.

Based upon the affirmed testimony of all parties and the submitted evidence, I find that on a balance of probabilities that I prefer the evidence of the Tenant over that of the Landlord. I find that the letters of complaint based upon the evidence of the witness P.H. were obtained under duress as the Tenant has stated. The Landlord has failed to provide evidence that the Tenant was responsible for jeopardizing the health or safety or any lawful right of another occupant, has put the Landlord's property at significant risk and has performed any illegal activities at the rental unit. The Landlord has not acted on the issue of the Tenant's son in assigning of the rental unit or sublet the rental unit without the Landlord's written consent. The Landlord waited approximately 2 ½ to 4 years to act upon this and has also issued a notice of rent increase naming the "assignment/sublet person" as a Tenant. I find that the Landlord has accepted this person as a Tenant and there is no breach of assigning or subletting without the Landlord's written consent.

The Tenant's request to have the Landlord remove lattice work around the property is dismissed. I find that the Tenant has failed in providing sufficient evidence. The Tenant has provided no supporting evidence that the Landlord in not removing the lattice work is negligent and has caused the break-ins.

Conclusion

The Tenant is granted application to cancel a notice to end tenancy for cause is granted. The Tenancy shall continue.

The Tenant's request to have the Landlord remove the lattice work is denied.

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 21, 2011.

Residential Tenancy Branch