



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and resolution to outstanding issues.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

At the outset of the hearing the landlord asserted that the *Residential Tenancy Act (Act)* had no jurisdiction in relation to this tenancy as the tenant shared a kitchen and bathroom with the landlord. The landlord states she lives in another community during the week and in this location on weekends. The tenant testified there is no such arrangement that the landlord was to share his kitchen or bathroom.

The parties have an unsigned Residential Tenancy Branch (RTB) Tenancy Agreement outlining the components of the agreement with no addendums attached depicting any additional caveats or items. The landlord herself had previously filed an Application for Dispute Resolution seeking an order of possession against the tenant.

Despite the landlord's claim, I find her actions in using the RTB Tenancy Agreement and trying to evict the tenant through the mechanisms under the *Act* provide sufficient justification to accept jurisdiction in these matters.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order of possession to the rental unit; for an order to have the landlord prevented from restricting the tenant's access; to a monetary order compensation for expenses resulting from the landlord's refusal to grant the tenant access to the rental unit, pursuant to Sections 30, 31, 54, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in May 2010 as a month to month tenancy for a monthly rent of \$500.00 due on the 20th of each month. The parties dispute whether a security deposit was paid or not.

The landlord asserts that as a result of a no contact order the tenant is not allowed near the tenant in the upper rental unit and as such the landlord will not allow the tenant access to the rental unit unless escorted and scheduled.

As a result, the tenant states that he has had to stay with friends and/or family, on the street or other emergency shelters. The tenant estimates his costs are at about \$2,000.00 for items related to his cell phone usage; hotel rooms; lost food (left in the rental unit); clothing that he had to purchase and food in restaurants.

Both parties provided copies of the no contact order after the hearing. While the order does specify the tenant is to have no contact with a tenant who lives above this rental unit and it states the tenant must live only where his bail supervisor directs, there is nothing from the bail supervisor indicating where that residence is.

Analysis

Regardless of what court orders have been issued the landlord has no right under the *Act* to restrict access or prevent a tenant with a valid tenancy agreement from living in his rental unit. If the tenant living in this location is contrary to any orders issued by other courts, it is those courts that must enforce those orders with in accordance with provisions afforded to them.

As such, I find the landlord has no authority to restrict the tenant's access to the rental unit and I order the landlord to provide the tenant with an appropriate method to access his own rental unit immediately.

While the tenant has filed some receipts into evidence, I find they do not substantiate his financial claim. However, as the landlord has unlawfully restricted the tenant's access to his rental unit, I order the landlord to return rent for the month of March and April 2011 the tenant.

I note also that in the hearing the landlord testified that she had issued a 10 Day Notice to End Tenancy for Unpaid Rent on March 23, 2011 and posted it on the tenant's door. If the tenant has not paid rent for the month of April, 2011 the landlord will be deemed to have partially satisfied this order.

Conclusion

I find that the tenant is entitled to an Order of Possession effective **immediately after service on the landlord**. This order must be served on the landlord and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,050.00** comprised of \$1,000.00 rent reimbursement and the \$50.00 fee paid by the landlord for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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 08, 2011.

Residential Tenancy Branch