



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for the filing fee. The tenant applied for an order to cancel the notice to end tenancy.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to a monetary order for the filing fee?

Background and Evidence

The rental unit consists of a house and acreage. The landlord rented the entire house from the owner of the property for \$2,700.00 per month and sub let the upper portion of the home to the tenant. In a tenancy agreement signed on January 08, 2010, by the tenant, the tenant agreed to the terms of the original tenancy agreement that was entered into by the landlord and the owner of the property on November 30, 2010. A term of this tenancy agreement states that the tenant will occupy the upper level while the landlord will occupy the lower level.

On January 13, 2010 these two parties entered into a sub tenancy agreement which was attached to the main agreement as described above. The tenant agreed to pay the landlord rent in the amount of \$2,300.00 for the portion of the home that she occupied which consisted of the upper level.

The tenant testified that approximately one year ago, the landlord moved all his belongings out of the basement and did not use the basement on a regular basis. The tenant stated that the landlord gave her possession of the basement. The landlord agreed that he had moved his belongings out of the basement but denied having given the tenant possession of the basement. He stated that he retained access to the basement for his use and the use of his guests.

Over time, the relationship between these two parties progressively deteriorated which made resolution of tenancy related issues, at best frustrating for both parties.

On June 28, 2011, the landlord attempted to access the basement and found that the lock had been changed. He served the tenant with a one month notice to end tenancy for cause. The reasons for the notice are as follows:

- The tenant has seriously jeopardized the lawful right of the landlord
- The tenant has engaged in an activity that has seriously jeopardized a lawful right of the landlord

The tenant stated that the lock was broken and she simply transferred a lock from an interior door to the main door of the basement. The tenant stated that the landlord did have a key to this lock but agreed that she failed to notify the landlord about the change.

Analysis

Section 31 of the *Residential Tenancy Act* addresses prohibitions on changes to locks as follows:

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Based on section 31, I find that by changing the locks without the permission of the landlord, the tenant was not in compliance with 31(3).

In addition, by changing the lock, the tenant denied the landlord access to the portion of the home that was for his sole use.

In order to support the notice to end tenancy, the landlord must prove at least one of the following reasons.

- The tenant has seriously jeopardized the lawful right of the landlord
- The tenant has engaged in an activity that has seriously jeopardized a lawful right of the landlord

Based on the documentary evidence and the verbal testimony of both parties, I find that by changing the locks without the permission of the landlord, the tenant denied the landlord access to the basement which he had possession of, thereby jeopardizing the lawful right of the landlord to enter the home. Therefore I find that the landlord has cause to end the tenancy and I uphold the notice to end tenancy.

I find that the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective on or before 1:00 p.m. on August 31, 2011. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his case, he is also entitled to the recovery of the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord an order of possession effective on or before **1:00 p.m. on August 31, 2011**. I also grant the landlord a monetary order in the amount of **\$50.00**.

The tenant's application is dismissed in its entirety.

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: July 27, 2011.

Residential Tenancy Branch