



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, OLC, LRE, FF, O

For the landlords - OPL, MNDC, FF (OPC)

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order for the landlord to comply with the *Act*, an Order to suspend or set conditions on the landlords right to enter the rental unit, other issues and to recover his filing fee. The landlords seek an Order of Possession for cause (the landlord had checked the wrong box on the application but have provided details to end the tenancy for cause so an amendment has been granted to their application). The landlords also seek a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover their filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with each other's notice of this hearing and application.

Both parties appeared, 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 a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the tenant entitled to an Order to suspend or set conditions on the landlords' right to enter the rental unit?
- Is the landlord entitled to an Order of Possession based on the undisputed One Month Notice to End Tenancy for cause?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both Parties agree that this month to month tenancy started on January 01, 2006. The tenant pays a monthly rent of \$400.00 which is due on the 1st of each month. The tenant paid a security deposit of \$150.00 on January 01, 2006.

The landlord's agent testifies that the tenant was served with a One Month Notice to End Tenancy on May 31, 2011 in person. The tenant agrees he did receive two pages of this Notice although only one page has been presented in evidence. This Notice has an effective date of July 31, 2011. Page two of this notice informs the tenant he has 10 Days to dispute the Notice by filing an application for dispute resolution.

The landlord's testify that the tenant has taken over the common areas of the unit and has turned one end of the common living room into his wardrobe and has hung a curtain over this area. They state he has filled the common areas with his belongings and has moved the landlords' furniture out of the way. They state the tenant collects clothes off the street and brings them home, washes them and sends them back to Columbia. They states this puts an undue strain on the laundry facilities and has increased the costs for power usage.

The landlord's testify when they try to speak to the tenant he becomes threatening towards them. On One occasion the landlord's agent testifies that he entered the common area to show a client the basement suite. He states he is an Outreach Worker and places clients in this unit for the landlords and clients benefit. However, he states when he entered the unit the tenant challenged him as to what he was doing in his home. He states the tenant was very angry and would not listen when he tried to tell him it was shared accommodation. Eventually he states the tenant called the police. When the police arrived they looked at the unit and agreed it was shared accommodation.

The landlord's witness who also rents a room in the basement unit testifies that on June 30, 2011 at 7.00 p.m. he was in the unit when the tenant started to insult him. He states he suffered 20 minutes of abuse and eventually lost his temper with the tenant. He states he lives in fear of the tenant who tries to pick a fight with him. The witness describes an occasion when he saw the tenant with a knife, he states he went back into his room and he heard the tenant threaten another tenant. The police were then called. The witness states at this time he is too afraid to live in the unit and he is in temporary shelter accommodation.

The tenant declined to cross examine this witness.

The landlord's agent testifies the tenant becomes angry with other tenants if they ask him to clean up his stuff from the common areas. It was after one of these confrontations that he pulled a knife on the other tenant.

The landlords testify that the tenant signed the Notice to End Tenancy and also signed another document agreeing to move from the rental unit at the end of July, 2011. This document has been provided in evidence. The landlords seek an Order of Possession for July 31, 2011 at 1.00 p.m.

The landlords seek to recover \$750.00 in cleaning services from the tenant. They state they have to go into the common areas each month to clean up after the tenant. They state they normally charge other tenants \$25.00 per month for this service however this tenant did not want to pay this charge. The landlord's state as the tenant creates the mess in the unit and

the other tenants ask them to come and clean the unit they feel this has become their responsibility and want to recover this cleaning cost from the tenant since the start of his tenancy. The landlords testify that they do not enter the tenants' room at any time they only go into the common areas.

The tenant testifies that the problems all started in the unit when the landlords started to rent rooms to "crazy people". The tenant claims he rents the unit from the landlord and allows her to rent rooms to other tenants to help with the rent. He states there are no common areas in the unit but he allows other tenants to use the kitchen, living room and bathroom. The tenant states when the landlord's agent (the outreach worker) came to the house he was disrespectful towards him and told him he had to get out of the house and said he could come and sit in the living room and watch TV if he wanted as it is a common area. The tenant states he told the landlords' agent it was his rental unit and his furniture and not a common area.

The tenant testifies that the landlords just come into his home and humiliate him and do not show him any respect for his privacy. On one occasion the landlords came into the house and throw some of his university papers away. The tenant states other items of his have been stolen by tenants including his stereo and food. He states the landlords use his cleaning materials when they come to clean the unit and they did not replace these.

The tenant testifies that he does have a written tenancy agreement when he rented the upper portion of the house. When he moved into the basement unit with his son the landlord told him he had control of the unit. He states his son later moved out and now the landlords are now saying this is a shared unit with common areas. He states the landlords are rude to him and do not show him respect.

The tenant testifies about the incident with the knife as described by the landlord's witness. He states the other tenant had a knife so he got one to defend himself.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. With regard to the landlords request for an Order of Possession; I accept that the tenant was served the One Month Notice to End Tenancy for cause, pursuant to section 88 of the *Act*. The Notice states that the tenant had 10 days to apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not dispute the Notice to End Tenancy within 10 days and signed an agreement to vacate the rental unit by 1.00 p.m. on July 31, 2011.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 47(5) of the *Act*, to have accepted that the tenancy ends on the effective date of the Notice and I grant the landlord an Order of Possession.

With regard to the landlords claim for compensation of \$750.00 for cleaning the rental unit, I have considered both Parties arguments in this matter and find there is no evidence to show that an agreement was entered into for the landlords to clean the rental unit for this tenant. The landlord cannot now make a claim for cleaning against the tenant as the tenant is entitled to clean his own unit. I find the landlords claim to recover this sum over the term of the tenancy to be denied and any further claim for cleaning would be premature as the tenant has not yet vacated the rental unit and must be given the opportunity before the tenancy ends to ensure the unit is left in a reasonably clean condition. Consequently this section of the landlords claim is dismissed with leave to reapply in the event the tenant does not leave his rental room in a reasonably clean condition at the end of his tenancy.

With regard to the tenants claim for compensation for \$5,000.00 the tenant has provided no evidence to support his claim that this unit is rented solely by him with a proviso for rooms to be rented by the landlord. I find it likely therefore that this is shared accommodation and the tenant rents one room for \$400.00 per month and the other areas are shared common areas. A landlord is entitled to enter common areas and there is no evidence presented by the tenant to show the landlords have entered his room without his consent.

The tenant seeks compensation because the landlords are rude and disrespectful towards him but again I have no evidence to show that this has been the case or that the tenant has

suffered a loss of quiet enjoyment. When one persons testimony is contradicted by the other then the burden of proof falls to the person making the claim to provide corroborating evidence to support their claim and the tenant has provided no corroborating evidence and therefore has not met the burden of proof in this matter. Consequently the tenants' application for a Monetary Order is dismissed without leave to reapply.

With regard to the tenants application for an Order for the landlord to comply with the Act; the tenant has provided no evidence that this is his sole use unit and therefore the landlords are entitled to enter common areas of the unit. I further find even if the tenant was successful in obtaining an Order of this kind as the tenancy will end on July 31m 2011 no Order of this nature would be enforceable. Therefore this section of the tenants' application is also dismissed without leave to reapply.

The tenant has applied for an Order to suspend or set conditions on the landlord's right to enter the rental unit. As stated above I have determined from the evidence presented that this is shared accommodation therefore the landlords do have a right to enter the common areas. The tenant has provided no evidence to support his claim that the landlords have entered his room without permission and therefore I dismiss this section of his claim without leave to reapply.

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply

The landlord's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective at 1.00 p.m. on July 31, 2011. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlords retain this amount from the security deposit and interest of \$150.00 leaving a balance \$100.00 plus \$5.31 in accrued interest. The sum of \$105.31 must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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 11, 2011.

Residential Tenancy Branch