



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

CNC, MNDC, PSF, LRE

Introduction

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause. The tenant was also seeking monetary compensation of \$2,000.00, an order that the landlord provide services and facilities required by law and an order limiting the landlord's access to the suite. Both parties appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled.
- Whether the tenant is entitled to compensation for loss of value to the tenancy.
- Whether orders should be issued to compel the landlord to provide services and facilities required by law and to restrict the landlord's access to the suite.

The burden of proof is on the landlord to establish that the Notice was justified. The burden of proof is on the tenant for the remainder of the issues.

Background and Evidence

The six-month term tenancy began in June 2011 with rent of \$1,025.00 including heat and a security deposit of \$512.50 was paid.

The landlord testified that a One Month Notice to End Tenancy for Cause was issued and personally served on the tenant on July 31, 2011. The basis for the Notice was the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord, seriously jeopardized the health, safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

The landlord testified that when she had originally rented the unit to the tenant, the tenant was distraught and the landlord had the intention to help her out in any way she could. The landlord testified that that over the course of the tenancy, the tenant failed to pay rent on time, had not reported damage to the plumbing, made confrontational phone calls to the landlord and had heated disputes with the landlord. The landlord was of the opinion that the tenant's insistence on recording her conversations and taking photos, was behaviour that was not compliant with the Act. The landlord testified that the tenant's estranged husband had acted in an overtly aggressive manner and engaged in a verbal attack when the landlord came into the unit, with proper notice, to look into a situation that involved a water leak. The landlord stated that she took exception when, after she had asked the tenant's daughter to have her mother contact the landlord regarding the rental arrears, the tenant threatened to get a no-contact order against the landlord. The landlord felt that the tenancy was not working out and asked that the tenant's application to cancel the One Month Notice to End Tenancy for Cause be dismissed.

The tenant stated that the One Month Notice to End Tenancy for Cause had no valid basis and should be cancelled. The tenant testified that the landlord's refusal to provide adequate heat from the very beginning of the tenancy caused the relationship to begin in a negative way. The tenant is basing her claim on:

- the landlord's inappropriate action in approaching her teenage daughter about the rent owed,
- the landlord's unsubstantiated accusations against the tenant's son alleging that he had tampered with the plumbing,
- the landlord's choice to disrupt the tenant's peace with after-hours repair work
- the serving of vexatious Notices and warnings and
- The landlord's actions in creating additional stress for the tenant

The tenant testified that the above conduct would warrant compensation under the Act and is asking for a retro-active rent abatement for her family's loss of quiet enjoyment , which is a right under the Act.

In answer to the tenant's testimony, the landlord testified that, although the heat was not set as high as the tenant would have apparently preferred, this should not have been seen by the tenant being a violation of the Act. The landlord did acknowledge that she approached the tenant's daughter about the late rent. According to the landlord, this was because she was unable to reach the tenant, who was refusing to respond to the landlord's calls. The landlord testified that she did not specifically accuse

the tenant's son of damaging the plumbing, she was just alarmed to find that the pipe with the shower head on it was protruding too far from the wall and did not understand why this problem had not been reported. According to the landlord, she was merely trying to get to the bottom of the problem. However, the tenant's estranged husband seemed intent on picking a fight. The landlord also pointed out that some of the tenant's stress was likely caused by her personal situation. The landlord disputed that any compensation was warranted.

Analysis:

I find that section 47 of the Act permits a landlord to give Notice to end tenancy for cause and requires a One-Month Notice to be completed on the proper form with an effective date (a) not earlier than one month after the date the landlord issues the Notice and (b) the day before the day in the month that rent is due under the tenancy agreement.

In this instance, I find that the tenant's alleged transgressions, as presented by the landlord, even accepted as truth, would not be sufficient to justify ending this tenancy for cause. Although I found that the Notice must be cancelled, the parties engaged in a mediated discussion, the outcome of which was the following:

- By agreement of the parties, the tenancy will end on October 31, 2011, or earlier at the option of the tenant, and the landlord will be issued an enforceable Order of Possession for that date.
- By agreement of the parties, the tenant is at liberty, with written notice to the landlord, to end the tenancy earlier on a date that is acceptable to both parties and in exchange will cooperate in permitting the landlord to show the unit to prospective renters, with 24 hours written notice.
- All communications between the parties must be in written form and both the landlord and the tenant, including guests of the tenant, will refrain from direct verbal communication for the duration of the tenancy.

In regard to the portion of the tenant's application seeking monetary compensation, it is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the tenant to show that the landlord violated the Act and that this caused a devaluation of the tenancy.

I find that, while the landlord's actions may not have been appropriate and, had they persisted may have been considered as contravening several sections of the Act at some point, I am not able to find that a significant violation of the Act was committed by the landlord sufficient to warrant a rent abatement or other compensation. Given the above, I find that the tenant's monetary claim must be dismissed.

Conclusion

Based on the mutually acceptable terms described above, I hereby grant an Order of Possession effective October 31, 2011 at 1:00 p.m. in favour of the landlord. I also order that the parties restrict communication to written form and refrain from verbal conversation if possible. This includes any verbal dialogue with the tenant's children.

I find that the tenant is entitled to be reimbursed the cost of the application in the amount of \$50.00 and this may be deducted from the next rent owed. The remainder of the tenant's application is dismissed without leave to reapply.

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: August 30, 2011.

Residential Tenancy Branch