

DECISION

Dispute Codes: CNR, OLC, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent and for an order directing the landlord to comply with the *Act*. The tenant also applied for a monetary order for the recovery of the filing fee, mailing costs, bank fees and bus fare. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Is the tenant entitled to a monetary order? Was the landlord negligent in his duties as a landlord?

Background and Evidence

The tenancy began on February 01, 2000. Rent is \$873.00 due on the first of each month. The rental unit consists of an apartment in a building complex.

The tenant stated that through her tenancy of eleven years, she had never missed a rent payment. However on August 02, 2011, she paid her rent with a cheque that had hand and typewritten notes all over on both sides of the cheque. The landlord stated that his bank refused to accept it and requested him to get it certified by the tenant's bank. The tenant's bank was unable to certify it as there was no room on either side of the cheque to put a stamp on.

On August 04, 2011, the landlord served the tenant with a notice to end tenancy for nonpayment of rent. The tenant applied to dispute the notice but also paid rent with a money order that replaced the defaced cheque, on the day she received the notice.

The tenant maintained throughout the hearing and repeated herself numerous times, that the cheque was negotiable and that the landlord lied about the bank refusing to cash it.

The tenant concluded that since her cheque was negotiable, she had paid her rent on August 02. The landlord filed copies of stamped bank deposit slips in which the amount of the cheque was entered and then crossed out. The total was also amended. The

landlord stated that the bank clerk refused to accept the cheque and crossed it out on the bank slip. The tenant argued that the landlord cancelled the entry on the slip and did not present the cheque to the teller.

On or about the third week of July, the tenant verbally complained about the night activities of the upstairs occupant. The tenant stated that the upstairs occupant made stomping noises at night when she went to the bathroom. The tenant also heard creaking sounds which disturbed her sleep. The tenant stated that the use of the dryer in the upstairs suite causes vibrations that disturb her.

The landlord stated that upon receiving the complaint he spoke with the upstairs occupant regarding the noise disturbances at night. The upstairs occupant stated that she works full time and except for visits to the bathroom, she sleeps through the night. The landlord requested the upstairs occupant to refrain from using the dryer and the tenant agreed that she had not heard the dryer for approximately three weeks.

The landlord reported the outcome of his visit with the upstairs occupant, to the tenant, in a letter dated July 28, 2011. The tenant responded by leaving the landlord a nasty message which included swearing and shouting. During the hearing, the landlord played back a portion of the message. The tenant stated that she left the message prior to receiving the letter from the landlord.

The landlord stated that the upstairs occupant was a long term excellent tenant who had never disturbed any other occupants of the building.

The tenant filed a large volume of typed and hand written narratives regarding issues with the landlord. The main issues were the validity of the August rent cheque and the activities of the upstairs occupant. The tenant also referred to a notice to end tenancy for cause that was served to her on August 31, 2011 and to events that occurred in the past which were no longer a problem.

I explained to the tenant that she was at liberty to dispute the new notice to end tenancy and it would be dealt with at a later hearing.

The tenant has made a monetary claim for the following:

1.	Bank fees for a Money order	\$7.50
2.	Bus fare	\$7.50

3.	Mailing costs	\$20.94
4.	Filing fee	\$50.00
	Total	\$85.94

Analysis

The tenant received the notice to end tenancy for unpaid rent, on August 04, 2011 and paid rent within five days of receiving the notice to end tenancy. Therefore the tenant was not required to dispute the notice as the notice is cancelled once rent is paid within the legislated time period. Accordingly, the notice to end tenancy is set aside and the tenancy will continue.

Based on the testimony of both parties, I find that the landlord acted in a timely manner with regard to following up on the tenant's complaint. The upstairs occupant ceased her use of the dryer but continues to disturb the tenant with her nightly trips to the bathroom. The tenant is requesting that the landlord be directed to comply with the *Act* and stop the noise disturbances.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

The tenant's testimony consisted of noise disturbances associated with normal every day activities. At the start of the tenancy, the tenant was aware that there were other occupied suites upstairs and therefore noise disturbances caused by movements on the upper floor are not unexpected.

Tenants renting an apartment are required to accept the fact that that they will hear noises from the upstairs. I find that the tenant has not proven that the noise disturbances were deliberate on the part of the upstairs occupant.

I find that the tenant may get disturbed by the movements of the residents upstairs, but this does not constitute a basis for a breach of the covenant of quiet enjoyment.

The legislation does not permit me to award any litigation related costs other than the filing fee. Accordingly the tenant's claim for bank fees, bus fare and mailing costs is dismissed. The tenant's application to dispute the notice to end tenancy was

unnecessary and the tenant has not proven the balance of her case and therefore she must bear the cost of filing her application.

Conclusion

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: September 09, 2011.

Residential Tenancy Branch