



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and for an order to have the landlord comply with the *Residential Tenancy Act* (Act), regulation or tenancy agreement.

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

The tenant submitted into evidence a copy of a letter dated September 28, 2011 to the landlord giving the landlord notice that she intends to vacate the rental unit by October 31, 2011. Despite the tenancy ending the tenant wished to proceed with this hearing.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order to have the landlord comply with the Act, regulation or tenancy agreement; and to a monetary order to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 13, 14, 40, 47, 67, and 72 of the Act.

The issues to be decided are whether the landlord is entitled to an order of possession for cause, pursuant to Section 55 of the Act.

Background and Evidence

Both parties submitted a copy of a tenancy agreement signed by the parties on January 18, 2009 for a month to month tenancy with the monthly rent in the amount of \$1,800.00 for the "full House" due on "each 31st" and that a security deposit of \$900.00 was paid.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 14, 2011 with an effective vacancy date of October 15, 2011 citing the tenant has allowed an unreasonable number of occupants in the unit and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified the tenant had as many as 6 people living in a 3 bedroom house. The landlord could not explain why he felt that 6 people living in a 3 bedroom house

was unreasonable. The landlord testified that if there were 6 people there then he would be liable if something happened to them, such as an injury or death in a house fire. The landlord provided no evidence or testimony how or why that would be different if it was just the person named on the tenancy agreement. The landlord testified that the noises caused by the tenant were disturbing the tenant in the basement unit.

The tenant testified she wants to make sure the landlord complies with the *Act* by returning her security deposit when she moves out on October 31, 2011. She also wants an order to have the landlord not impose a rent increase for additional occupants; continue to request the personal information of the other occupants of the rental unit; harass the tenants by posting notices on the door of the rental unit; or threatening the loss of peace and quiet by threatening to evict the tenant.

Analysis

Section 47 of the *Act* does allow a landlord to end a tenancy if there is an unreasonable number of occupants in the rental unit and/or if the tenant or a person permitted on the residential property significantly interferes with or unreasonably disturbs another occupant or the landlord.

Based on the testimony of the landlord, I find the landlord has failed to establish that 6 people living in a 3 bedroom house is unreasonable. Despite the landlord's claim that tenant from the basement is being disturbed by this tenant I accept that this tenant has a tenancy agreement with the landlord for the whole house and the person living in the basement is not a tenant of the landlord.

As such, the matter of the person in the basement being disturbed by this tenant is a matter between roommates and not grounds for the landlord to end a tenancy and in addition the person in the basement is an occupant and not a tenant of the landlord and is therefore not entitled to protection to the right of quiet enjoyment under the *Act*.

In relation to the tenant's Application to have the landlord comply with the return of her security deposit, I find the tenant's Application to be premature as the tenancy has not yet ended. Should the landlord fail to comply with his obligations in relation to the security deposit the tenant is at liberty to file a new Application for Dispute Resolution.

I find that as the tenancy is ending in 17 days and since the tenant has not paid any additional rent monies or will because the tenancy is ending there is no reason to issue an order to have the landlord comply with the *Act*, regulation or tenancy agreement.

In regard to the tenant's request to have an order to have the landlord comply with the *Act*, regulation or tenancy agreement to stop asking for personal information of the occupants, I find the *Act*, regulation and tenancy agreement do not preclude the landlord from asking for this information and as such I cannot issue such an order.

Section 88 of the *Act* allows the landlord to post notices on the door of the rental unit when providing the tenants with correspondence or any other notices related to the tenancy, as such I find no reason to issue an order to compel the landlord from stopping this practice.

And finally, in relation to the tenant's request to have an order to have the landlord comply with not threatening her with eviction, I find, based on the balance of probabilities and in conjunction with the fact the tenant is vacating the rental unit in 17 days, it is unlikely that the landlord will threaten her with eviction and find no reason to issue an order.

Conclusion

I find the landlord has failed to establish cause and I grant the tenant's Application to cancel the Notice to End Tenancy for Cause and find the tenancy in full force and effect until the effective date of the tenant's notice to end tenancy (October 31, 2011).

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$25.00** comprised of ½ of the \$50.00 fee paid by the tenant for this application, as she was only partially successful in her Application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: October 13, 2011.

Residential Tenancy Branch