



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel Notices to End Tenancy for Landlord's use of the property and for cause, for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 9, 2011 and the Tenant served the Landlord the amended application on September 30, 2011 by personal delivery. The Landlord said he received the application and the amended application and was in agreement for the hearing to go ahead. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

At the start of the conference call the Landlord said he had withdrawn the 2 Month Notice to End Tenancy dated August 31, 2011, but wanted to go ahead with the hearing for the 1 Month Notice to End Tenancy for Cause dated September 27, 2011. The Tenant said he agreed to go ahead with the hearing as indicated in his amended application to cancel the 1 Month Notice to End Tenancy for Cause dated September 30, 2011.

Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the 1 Month Notice to End Tenancy for Cause?
2. Is there a loss or damages and if so how much?
3. Is the Tenant entitled to compensation for the loss or damages and if so how much?

Background and Evidence

This tenancy started on October 15, 2009 as a 1 year tenancy then it renewed as a month to month tenancy. Rent is \$950.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$450.00 on October 15, 2009.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 27 by personal delivery on September 27, 2011. The Effective Vacancy Date on the Notice is October 31, 2011. The Tenant is living in the unit and the Landlord said he is requesting an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say the reasons on the 1 Month Notice to End Tenancy are that the Tenant has been repeatedly late with the rent payments, the Tenant has significantly or unreasonably disturbed other tenants and the Tenant has caused extraordinary damage to the unit.

The Landlord said there were a number of incidents that lead to the issuing of the 1 Month Notice to End Tenancy and they are as follows:

- 1). The Landlord said the two previous tenants moved out of the basement unit in the complex because the Tenant was noisy, he turn the heat off and he used the other tenants parking space. The Landlord provided two letters from the previous tenants, one was signed the other was not signed. The previous tenants were not available to give testimony at the hearing. The signed letter from the previous tenant said he move out of the unit because the Tenant's family was too noisy and the Tenant turned the heat off upstairs which also turned the heat off in his rental unit.
- 2). The Landlord continued to say the Tenant caused damage to the rental unit. When questioned the Landlord said he did not do a move in condition inspection report. The Landlord did submit pictures of the property but there was nothing to compare the pictures to from the start of the tenancy.
- 3). The Landlord also said the Tenant was repeatedly late with the rent payments. The Landlord said he had problems arranging times to pick up the rent cheques and therefore the rent was late many months.

The Landlord said he is requesting an Order of Possession if the Tenant's application to cancel the Notice to End Tenancy is not successful.

The Tenant said the Landlord's claims are untrue and he made the following statements regarding each of the points the Landlord made:

- 1). The Tenant said they did not have problems with the previous tenants and they did not receive any written notices or warnings about noise or issues with the heat in the rental complex.

2). The Tenant said the house is old and there was and still are many issues in the house that were there when they moved in and still are issues. The Tenant said there was no move in condition inspection report done on move in. The Tenant provided a Witness (and Occupant) that testified the house was in better condition now than when they moved in.

3). The Tenant said the Landlord or his agent always came in person to pick up the rent and they always had the rent cheque on the day the Landlord came to pick it up. The Tenant submitted into evidence the rent cheques which showed rent was paid on the 1, 2 or 4 day of the month over the time the tenancy has been in effect. The Tenant said they paid the rent when the Landlord came to pick it up and that is how the rent was always paid since the start of the tenancy.

The Tenant and the Tenant's Witness said they believe the Landlord has made up these claims to evict them from the house so that he can sell the house. The Tenant said the house is for sale at the present time and there is a for sale sign in the front of the house.

In addition the Tenant said he is making a monetary claim for an illegal rent increase. The Landlord said he increased the rent from \$900.00 to \$950.00 when the tenancy was renewed from a fixed term tenancy to a month to month tenancy on October 1, 2010. The Tenant said the Landlord did not give him any written notice of the rent increase nor was it the proper amount of rent increase allowed by the Residential Tenancy Branch. The Tenant is claiming \$322.50 of over payment of rent from October, 2010 to October, 2011.

The Tenant said they were surprised by the eviction notices and they wish to continue the tenancy.

Analysis

It is apparent from the contradictory testimony and evidence that there are issues between the Tenant and the Landlord. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. The Landlord has submitted letters from the previous tenants, but they were not available to testify; therefore it was not possible to corroborate the claims in the letters. As well the Landlord said he verbally told the Tenant about the noise and heat issues, but he did not advise the Tenant in writing that there were any problems with the tenancy. The Landlord did not deal with the other tenant's complaints by any other means available to him like supplying supplementary heat to the basement unit or insulating for heat and /or noise between the units. As well the Tenant and the Tenant's Witness both testified that

there were no issues between them and the other tenants. Therefore it is unclear what the situation between the tenants was. I find that the Landlord has not established proof that the Tenant **unreasonably** disturbed or **seriously** interfered with the other tenants. The burden of proving a claim lies with the person who served the Notice to End Tenancy and when it is just the one person's word against that of the other person that burden of proof is not met.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and dismiss the Landlord claim that the Tenant unreasonably disturbed the other tenants.

With respect to the Landlord's claim that the rent payments were repeatedly late I find the Landlord established an arrangement with the Tenant that it was normal for the Landlord to pick up the rent payments in person and the Landlord did not come on the first day of each month to get the rent; but the rent payments were made when the Landlord came to pick them up. Consequently I find the Tenant was not late paying the rent and I dismiss the Landlord's claim to End the Tenancy for repeatedly late rent payments.

The Landlord also is claiming extraordinary damage to the property as a reason to evict the Tenant. On questioning the Landlord indicated that no move in condition inspection report was completed with the tenant on move in; therefore no base line for the condition of the unit is established. I have nothing to compare the condition of the unit now to the condition of the unit at the beginning of the tenancy. Consequently the Landlord has not established grounds to demonstrate extraordinary damage to the unit. I dismiss the Landlord's claim of extraordinary damage to the rental unit.

As a result I Order the 1 Month Notice to End Tenancy for Cause date September 27, 2011 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

In addition as the Landlord did not give the Tenant proper notice of a rent increase and did not sign a new tenancy agreement in October, 2010, but renewed the existing tenancy agreement on a month to month basis. I order the Tenant to recover the full rent increase of 12 months times \$50.00 = \$600.00 by reducing the November, 2011 rent by \$600.00 leaving \$300.00 of rent to pay for November, 2011. This is a onetime rent reduction and then rent will continue as in the tenancy agreement in the amount of \$900.00 per month. The Landlord has the right to raise the rent if he gives the Tenant the proper notice on the correct form and the increase is the legal amount.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the November, 2011 rent as well. The November, 2011 rent is adjusted to \$250.00.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated August 12, 2011 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

I order the November, 2011 rent to be reduced to \$250.00 as a onetime reduction.

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*.

Residential Tenancy Branch