



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for damage or loss under the Act - Section 67;
3. An Order for the Landlord to comply with the Act - Section 62; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice to End tenancy valid?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an Order that the landlord comply with the Act, regulation or tenancy agreement?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on July 1, 2011. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00.

On August 31, 2011, the Landlord personally served the Tenant with One Month Notice to End Tenancy for Cause (the “Notice”). A copy of the Notice was not provided as

evidence and the Parties agree that the Notice has an effective date of September 30, 2011 and lists the following causes:

1. The tenant has allowed an unreasonable number of occupants in the unit; and
2. The tenant has engaged in illegal activity that has, or is likely to put the landlord's property at significant risk.

The Landlord states that the Tenant has allowed his girlfriend to occupy the unit with the Tenant and that the tenancy agreement is only with the Tenant. The Landlord states that the unit is 650 square feet and contains two bedrooms. The Landlord states that he advertised the unit for a single person or a single parent with children and not a couple.

The Landlord states that the Tenant was growing four to five marihuana plants in the unit. The Landlord states that the Tenant was observed having put the plants on the deck for a short period of time to obtain sun. The Landlord states that the matter was reported to the police. The police report notes that when the police arrived at the unit the same day as the report, August 22, 2011, the Tenant was not there and the police were told by the Tenant's girlfriend that the Tenant did have marihuana plants in the unit. The police returned on September 17, 2011 and were advised by the Landlord that the plants were no longer in the unit. The report notes that the Landlord asked the police to no longer attend the Tenant's unit as the Landlord would be evicting the Tenant. The police report notes "It is not believed that the electrical had been tampered with in regards to the "grow op" and appeared to be for personal use only." No charges were laid in connection with the report and the police file was concluded.

The Landlord states that the growing of those plants in the unit may cause a future problem with insurance, may cause the Landlord a problem when he decided to sell the property, is likely to cause damage because of the heat and light used and finally may possibly cause fire damage due to electrical tampering.

The Tenant states that the Landlord called the police to complain of noise from the unit. The Tenant states that the noise complained of came from a movie that the Tenant was

watching. The Parties agree that on July 26, 2011, the Landlord's family members entered the Tenant's unit without proper notice as provided under the Act to carry out an inspection of the unit. The Tenant states that the Landlord also entered the Tenant's unit without permission or notice on August 20, 2011 and that for several days after the police attended the unit looking for the Tenant. The Landlord denies that entry was made into the unit on August 20, 2011. The Tenant states that on September 3, 2011, the Landlord called the Tenant a name and chased the Tenant off the unit property. The Tenant claims the amount of \$860.00 for the loss of peaceful enjoyment caused by the Landlord's actions. The Tenant states that he intends to give the Landlord notice to end the tenancy.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the Landlord's own evidence that he was originally looking for a single parent tenant with a child or children, I find the Landlord has contradicted his claim that by the Tenant allowing his girlfriend to occupy the unit would be an unreasonable number of occupants in the unit. I find therefore that the Landlord has not substantiated this item of cause.

Given the police report, I find that the Landlord has substantiated on a balance of probabilities that the Tenant was growing a few marihuana plants in the unit for an unknown period of time. However, given the conclusion of the police report with no charges, I cannot find that an illegal activity occurred. If this was an illegal activity however, given the police report noting that no electrical tampering occurred in relation to the growing of the plants, I cannot find that the Landlord has substantiated that the Tenant's activity has damaged the Landlord's property. Further, given the lack of evidence to substantiate any future insurance or sale problems in relation to the unit, I cannot find that the Landlord's belief of a possible problem caused by the growing of these plants substantiates likely damage to the property. As the Landlord has not met

the burden of proof on a balance of probabilities in relation to either of the stated causes, I find that the Notice is invalid and that the Tenant is entitled to a cancellation of the Notice. Accordingly, I cancel the Notice and the tenancy continues.

Section 28 sets out a tenant's entitlement to quiet enjoyment that includes a right to reasonable privacy, freedom from unreasonable disturbance and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit as provided by section 29 of the Act . Section 7 of the Act further provides that if a landlord does not comply with the Act, the landlord must compensate the tenant for damage or loss that results. Given the undisputed evidence that the Landlord entered the Tenant's unit on one occasion without right accorded under the Act and chased the Tenant off the property on one occasion, I find that the Tenant has substantiated that the Landlord caused the Tenant to suffer a loss of quiet enjoyment. Accordingly, I find that the Tenant is entitled to compensation. I find however that the amount claimed by the Tenant is unreasonably high and find a more reasonable sum to be \$425.00. The Tenant is therefore entitled to this amount.

As the Tenant did not provide any evidence to support his claim for the Landlord to comply with the Act, regulation or tenancy agreement, I dismiss this part of the Tenant's application. As the Tenant's claim has been successful, I also find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$475.00**. As the Tenant may have provided notice to end the tenancy by the date of this decision, I provide the Tenant with a monetary order for this sum. If the Tenant has not ended the tenancy, I order the Tenant to reduce the next monthly rent payable by the amount of the monetary order of \$475.00.

Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$\$475.00**. If necessary, this order may be filed in the Small Claims Court and 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 4, 2011.

Residential Tenancy Branch