



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPR, OPC, MNR, MNSD, CNC, MNDC, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in satisfaction of her claim. The tenant applied to cancel the notice to end tenancy and for a monetary order for compensation for loss under the *Act* and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant informed me that he was planning to move out on November 01, 2011. Therefore the tenant's application to cancel the notice to end tenancy is moot and the landlord will be granted an order of possession. The landlord requested that her application be amended to withdraw the portion of her application to retain the security deposit. She stated that she would deal with the return of the deposit directly with the tenant after he moves out.

Accordingly this hearing only dealt with the landlord's application for a monetary order for unpaid rent and for the filing and the tenant's application for compensation and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent and the filing fee?

Is the tenant entitled to a monetary order for compensation and the filing fee?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on December 01, 2008. The rent is \$1,600.00 per month due on the first of each month. The rental unit is located in a duplex which contains a total of five suites.

The landlord testified that she received complaints from the tenant regarding the behaviour of another occupant of the duplex – PB.

The tenant testified that PB is verbally abusive towards him, his son and his visitors and on occasion has threatened him with violence. The tenant also stated that PB is a drug dealer and deals take place at all hours of the night in the outside common areas of the rental property. Upon receipt of the complaints, the landlord visited PB to address the problem. PB complained about the tenant to the landlord stating that the tenant had verbally threatened him and PB had contacted the police. The landlord visited the police station and found out that there were two police reports involving the tenant – one for assault on his sub tenant and the other for threatening PB at the rental unit.

The landlord also found out from the police that there was no history of drug dealings at the rental address. The landlord stated that she had received the police reports regarding the two police files, but not in time to file as evidence. The landlord also filed letters of complaint against the tenant, from PB and another occupant of the duplex.

The tenant stated that PB was the main problem but he was able to reverse all fault and pin it on the tenant. The tenant filed letters of complaint from his son, his brother, a friend who house sat for him and from an occupant of a neighbouring building. The letters report swearing and threats from PB, “bad drug deals”, constant flow of “seedy” people to PB’s unit and inappropriate behaviour towards the tenant. One letter describes the tenant as “most respectable and responsible “and not a threat to others.

The tenant stated that he deserved compensation in the amount of \$3,200.00 for the loss of quiet enjoyment, cost of moving and for the stress and insecurity he experienced in his own home. The landlord is claiming rent for the months of September and October. The tenant agreed that he had not paid rent for these two months. He stated that he believed he deserved compensation in the amount of two month’s rent and for this reason he withheld his rent.

Analysis

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

In this case the tenant did not pay rent and has agreed to move out on or before November 01, 2011. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord has established a claim of \$3,200.00 for unpaid rent. Since the landlord has proven her case she is also entitled to the filing fee of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$3,250.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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. Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally not be held responsible for the actions of other tenants unless the landlord was notified of the problem and failed to take reasonable steps to correct it or prevent such conduct by other tenants.

I have reviewed the submissions of both parties and I find that the last two months were very stressful on both the tenant and PB for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant was not able to provide any independent evidence to support his complaint. His case is entirely dependent on his version of events, a version which is disputed by the landlord. I have no basis for favoring one version over the other.

Based on the testimony of both parties, I find that the landlord was made aware of the problem between PB and the tenant and took reasonable steps to correct it. Therefore I find that the tenant has not proven his case for compensation for the loss of quiet enjoyment and accordingly must bear the cost of filing his application.

Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. I also grant the landlord a monetary order in the amount of **\$3,250.00**. 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: October 04, 2011.

Residential Tenancy Branch