



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use, as well as for monetary compensation for loss under the Act, regulation or tenancy agreement. The tenant and one landlord participated in the teleconference hearing.

Preliminary Issue – Service of Evidence

The landlord submitted documentary and photographic evidence that he did not serve on the tenant.

As set out in the Rules of Procedure and the instructions included in the Dispute Resolution Hearing information package, all evidence that a party intends to rely on in the hearing must be provided to the other party. This requirement ensures that the other party may consider the evidence against them and provide their evidence in response, and so that the hearing may be conducted in accordance with the principles of administrative fairness.

Because the landlord did not serve the tenant with a copy of his evidence, I did not admit or consider the landlord's documentary and photographic evidence. I allowed the landlord to give oral testimony, and the tenant provided testimony in response.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began several years ago. The rental unit is a converted garage that is attached to a house. There is no written tenancy agreement. In April 2010 the landlord had a separate hydro meter installed for the rental unit, and since that time the tenant has paid for his own hydro use.

On August 31, 2011, the landlord personally served the tenant with a two month notice to end tenancy for landlord's use. The notice indicated that the reason for ending the tenancy was that the landlord intended to do renovations that required the rental unit to be vacant.

Notice to End Tenancy

The landlord's initial testimony was that he intends to do soundproofing between the house and the rental unit, and that this work will require the rental unit to be vacant for two weeks because dust from the drywall will get everywhere. Later in the hearing, the landlord stated that in total the renovations will take in excess of six weeks.

The tenant's response was that the soundproofing is a minor renovation that does not require vacant possession. The size of the rental unit is less than 500 square feet. If vacant possession is required, the tenant is amiable to being temporarily relocated. The tenant also questioned the landlord's good faith intention to do renovations, because the landlord served the notice to end tenancy on the same day that the property was listed for sale.

Monetary Claim – Overpayment of Hydro

The tenant stated that according to his calculations, he is using less power than he is being charged for. The landlord's practice is to send the tenant invoices at random times, and then the tenant pays the amount on the invoice. The tenant has claimed \$250 reimbursement for overpayment of hydro since April 2010.

The landlord's reply was that since the separate meter was installed, the tenant has been paying for his own hydro.

Analysis

Upon consideration of the relevant evidence, I find as follows.

Notice to End Tenancy

The notice to end tenancy is not valid. The landlord did not provide sufficient evidence to show that the intended renovations required vacant possession. Furthermore, the tenant stated that he would have been willing to temporarily move out of the rental unit, if required, to allow for the renovations. It would not therefore be necessary for the tenancy to end in order for the landlord to carry out the intended renovations. I therefore cancel the notice to end tenancy.

Monetary Claim – Overpayment of Hydro

The tenant did not provide sufficient evidence that he overpaid his hydro bills, only speculation that he was being overcharged. Further, the tenant only estimated the amount of the potential overpayment. The tenant is therefore not entitled to the \$250 claimed in this application.

I note that in order to avoid future disputes the landlord ought to provide the tenant with a copy of the original hydro bills along with his invoices.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

The tenant's application for monetary compensation is dismissed.

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 21, 2011.

Residential Tenancy Branch