



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, PSF, LRE, OPR, MNR, MNSD, FF

Introduction

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

The Tenant applied on October 5, 2011 for:

1. An Order cancelling a Notice to End Tenancy for Landlord's Use of Property – Section 49;
2. An Order cancelling a Notice to End Tenancy for unpaid rent – Section 46;
3. An Order for the Landlord to provide services or facilities required by law - Section 65;
4. An Order suspending or setting condition on the Landlord's right to enter the unit – Section 70; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on October 11, 2011 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent and utilities - Section 67;
3. A Monetary Order to retain all or part of the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant stated that as he was vacating the unit on November 30, 2011 the claims for cancellation of the Notice to End Tenancy for Landlord's Use and for the Landlord to provide services or facilities required by law are withdrawn.

Issue(s) to be Decided

Is the Notice to End Tenancy for non payment of rent valid?

Is the Landlord entitled to an Order of Possession?

Is the Tenant entitled to suspension of the Landlord's right to enter the unit?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Landlord was unable to state when the tenancy began and offered the date of summer 2005. The Tenant states that the tenancy began on July 1, 2006. Both Parties agree that the monthly rent payable is \$1,450.00. The Tenant states that the amount of security deposit paid at the beginning of the tenancy was \$1,500.00 and that this amount was paid by cheque. The Landlord states that the deposit taken was \$725.00 and that no receipt was provided for the security deposit. The Tenant states that all the tenants in the other 3 units in the house also paid a full month's rent for security deposit.

The Tenant states that since the beginning of the tenancy he has dealt with a third party (the "Agent") that the Landlord identified the Agent as her mother and agent. The Tenant states that in March 2011, the Agent promised the Tenant two free month's rent in exchange for assistance with the sale of the property such as ensuring access to all the units, showing the house to prospective buyers and to prepare the property for sale by carrying out tasks, such as landscaping and yard maintenance. The Tenant states that he spent several hours on the yard and that he showed the house to as many as three prospective purchasers. The Landlord denies that such an agreement was made with the Tenant, that the Tenant was not authorized to show the unit and states categorically that on not one occasion did prospective purchasers view the unit without the realtor.

The Landlord's Witness, the realtor, states that the Tenant did show the house on 1 or 2 occasions without the Witness or the Landlord when the Witness could not attend but that all of the other showings were conducted in the presence of the Witness. Further, the Witness states that the Tenant had the keys to one of the units in the house and would allow the realtor entry if this tenant was not home at the time of the showing. The Witness did not dispute that the building inspection occurred with the assistance of the

Tenant. The Tenant states that in reliance on this agreement, he did not pay October rent.

The Tenant states that on more than one occasion, he witnessed the Agent enter the other units while the tenants were out to make repairs in order to pass building inspections. The Tenant states that on one of these occasions, he personally assisted the Agent with the removal of a stove from an illegal unit. The Tenant states that he also believed that the Landlord had entered his unit on one occasion early on in the tenancy. For this reason, the Tenant seeks a stern warning that the Landlord not enter his unit for any reason, other than for an emergency, until the end of the tenancy. The Landlord states that at no time has anyone entered the Tenant's or other tenant's units without notice.

The Landlord did not provide any receipts to support the claim for unpaid utilities and it is noted that the Notice does not include any amount owing for unpaid utilities. The Landlord stated orally at the hearing that the amount of utilities owed is \$113.35.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. In this case, the Tenant filed an application within the required time period. The Tenant provided evidence of an agreement with the Agent that two month's rent would be provided free to the Tenant. Considering the Landlord's evidence denying such agreement, I note that this Agent was not called by the Tenant as a witness to support this denial. Further, I note that the Landlord's Witness that was called contradicted the statement of the Landlord regarding the showing of the unit. The Landlord's evidence was inconsistent and I find overall did not carry a ring of truth to it. Accordingly, I find that the Tenant's evidence is preferable and that the Tenant did have an agreement with the Agent for free rent. As the Tenant relied on this agreement for October's rent, I find that the Tenant had a valid reason for

not paying the rent for October 2011 and accordingly, I find that the Notice to end Tenancy for non-payment of rent is not valid. I therefore cancel the Notice. As the Landlord has not provided any receipts to support the claim of unpaid utilities, I dismiss this claim. As the Landlord's claims have been unsuccessful, I make no order in relation to recovery of the filing fee.

Accepting the evidence of the Tenant that the Landlord or the Agent entered the units of other tenants while they were out or without permission or notice, I find that it was likely that the Landlord conducted itself in the same way with the Tenant's unit and that the Tenant is fully justified in his belief that the Landlord may enter his unit without right. Accordingly, I order the Landlord to not enter the Tenant's unit for any reason other than for an emergency or unless the Tenant provides explicit permission for such entry. As the Tenant has been successful with his application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee. I order the Tenant to deduct this amount from any utilities owing for the month of November 2011.

Conclusion

The Landlord's claims are dismissed. The Notice is cancelled and the tenancy continues. I order the Landlord to not enter the Tenant's unit for any reason other than for an emergency or unless the Tenant provides permission for such entry. I order the Tenant to deduct the amount of \$50.00 for utilities owing for the month of November 2011.

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: November 01, 2011.
