



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, OPC, MND, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and a monetary order and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?
Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The rental unit is a bedroom in an apartment rented by the landlord from a third party. The landlord and tenant share common areas, including a kitchen, living room and bathroom.

The parties agreed that the tenant was served with a one month notice to end tenancy for cause on September 21, 2011. The tenant applied to dispute the notice on October 24, 2011 and claimed that she did not dispute it earlier because she thought it was a joke.

The landlord did not accept rent from the tenant for the month of November because she did not want to reinstate the tenancy. The landlord stated that she was agreeable to an order of possession being made effective on November 30 if she also received a monetary order for \$390.00 in occupational rent for the month of November.

The landlord sought an additional award of \$100.00 for repairs to the rental unit. She acknowledged that she had not made any repairs and was not out of pocket for any repair-related expenses.

The tenant seeks a compensation for loss of quiet enjoyment for the duration of the tenancy. She stated that the landlord interfered with her quiet enjoyment by twice served her with a notice to end tenancy, by complaining about noise made by the tenant and by giving her information about other rental units in the area which were available for rent. She further testified that she believed the landlord had been showing her room to prospective tenants without having given her written notice, that the landlord did not keep the unit sufficiently clean and that the landlord had disturbed her while she was in the bathroom by knocking on the door. The tenant stated that on one occasions the landlord's cat had defecated in the bathtub and another time on the carpet in her room. The tenant cleaned up the mess both times, once because the landlord was sleeping and the tenant did not wish to disturb her. She stated that the landlord had further disturbed her by giving her written notes.

The landlord denied having deprived the tenant of quiet enjoyment and stated that she complained about noise because the tenant came home from work just before midnight and disturbed the landlord's sleep by cooking and showering. The landlord stated that she gave the tenant information about rentals in order to be helpful and that she gave just 4 written notes during the tenancy, one of which was a written notice to show the tenant's room. The landlord stated that she would gladly have cleaned up after her cat had the tenant told her about the mess. The landlord testified that the rental unit is kept reasonably clean and that one side of the kitchen sink and half of the stove burners are always left open for the tenant's use.

Analysis

Section 47(5) of the Act provides that if a tenant does not dispute a notice to end tenancy for cause within 10 days, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the tenant claimed that she thought the Notice was a joke and offered this as an explanation for why she did not file within the prescribed time frame. In order to be granted an extension of time in which to make her application, the tenant must prove that exceptional circumstances prevented her from acting within the appropriate time frame. I do not accept that a belief that the Notice was a joke can be characterized as exceptional circumstances. The landlord wrote the tenant a notice on October 5 advising that she would be showing the rental unit to a prospective tenant and on October 11 and 19, wrote to remind the tenant that the tenancy would be ending on October 31. I find that the tenant had multiple warnings that the Notice should be taken seriously, but she chose to ignore those warnings. I deny the tenant's claim for an extension of time in which to make her

application. I find that the tenant conclusively accepted the end of the tenancy and accordingly dismiss her claim to set aside the Notice.

I grant the landlord an order of possession effective November 30, 2011. This order must be served on the tenant. Should the tenant fail to comply with the order, it may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to receive occupational rent for the month of November and I award her \$390.00. I grant her a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

As the landlord has not effected any of the repairs which she claims are required, I find that she has not suffered any loss and I dismiss her claim for \$100.00 for damages. I further dismiss her claim for the cost of preparing documents for this hearing as under the Act, a Residential Tenancy Branch filing fee is the only litigation-related expense which I am empowered to award.

Turning to the tenant's monetary claim, I am not persuaded that the landlord harassed the tenant as the tenant claimed or that the tenant lost quiet enjoyment to a compensable degree. The issues described by the tenant are typical issues which might arise where parties are sharing a small area. If the tenant were living in accommodation that she was not sharing with the landlord, she would be reasonable in expecting that the landlord would not complain about the noise she made when cooking or using the bathroom late at night, but she cannot reasonably expect the same distance where the unit is shared.

The tenant's photographs of the rental unit do not show that it unreasonably untidy and I find that 2 instances of the cat having defecated in the tub and on the carpet are relatively trivial, particularly as the landlord likely would have cleaned the mess had she been informed. I find that the written communication from the landlord to the tenant was not excessive and although the landlord's efforts to assist the tenant in finding new accommodation was not appreciated, it did not cause the tenant to lose quiet enjoyment to a degree that may be considered compensable.

I find that the tenant has failed to prove that she lost quiet enjoyment of the rental unit and accordingly I dismiss her claim.

Conclusion

The landlord is granted an order of possession and a monetary order for \$390.00. The tenant's claim 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: November 16, 2011

Residential Tenancy Branch