



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLE, LRE and FF

Introduction

By application of October 31, 2011, the tenant seeks to have set aside a Notice to End Tenancy for cause and recovery of the filing fee for this proceeding. By late submission of November 16, 2011, the tenant sought to amend her application to include a request for an Order that the landlord comply with the rental agreement and an order limiting the landlord's access to the rental unit. With the landlord's consent, the late amendments were accepted for the hearing.

Issue(s) to be Decided

This application requires a decision on whether the Notice to End Tenancy should be upheld or set aside, and whether orders for compliance and limiting landlord access are warranted.

Background and Evidence

This tenancy began on April 1, 2011. Rent is \$800 per month and the landlord holds security and pet damage deposits of \$400 each paid approximately two months before the tenancy began.

The tenancy is in a basement suite in a home occupied by the landlord.

As a matter of note the landlord and tenant had a friendly relationship and had socialized together.

During the hearing, the landlord gave evidence that the event leading to the notice to end tenancy arose on October 16, 2011. She stated that the tenant's boyfriend had parked his motorcycle on a part of the property where she had previously asked that he stop doing so as she had freshly seeded an area of the lawn over which he had to pass to access the parking spot.

The tenant stated that the landlord was aware they had gone out for the evening and had, in fact, invited the landlord to join them. She stated that while they were out, she received some combination of eight text and phone messages asking that the bike be moved. The landlord stated that there had been five such messages.

In any event, the last of them came after midnight, and after the motorcycle had already been moved.

There then ensued an incident in which the boyfriend knocked on the landlord's door to apparently protest the issue. The landlord stated that when she attempted to close the door, he put his foot in it three times. The tenant stated that the boyfriend was merely attempting to save his hand from having the door slammed on it. A guest of the landlord called police and the tenant's boyfriend left before police arrived.

On another issue, the landlord cites odours coming from the tenant's rental unit from her cats and the tenant states that the landlord has locked the door to a storage area which is accessible only through the rental unit and which she was allowed to use. The landlord stated that she keeps it locked as it contains the electrical panel for the building, the panel for the security system and the cable.

The tenant stated that she had been given use of it from the beginning of the tenancy, and unfettered use of it for four months following until the landlord started locking it.

Analysis

Under normal circumstances, I would find the attendance of the tenant's boyfriend at the landlord's door with an apparently hostile issue after midnight, and physically preventing her from closing the door to be clear cause to end the tenancy under section 47 of the *Act*.

However, in the present matter, I take into account that the landlord had initiated the communication by numerous calls and text messages to move the motorcycle and the last of those came after the motorcycle had been moved. I am further taking into account that the parties knew one another socially to that time, the boyfriend had cause to believe the landlord was still up, and the motorcycle has not been back to the property since the incident.

While I do so with reluctance, I give the benefit of the doubt to the tenant with the caution that communication with the landlord must be limited to appropriate times and mediums.

I hereby set aside the notice to end tenancy of October 25, 2011.

As to access to the storage area, I accept the evidence of the tenant that she was granted unfettered access to the storage area, accessible only through her rental unit, until the relationship with the landlord was strained with other issues.

Therefore, as authorized under section 62 of the *Act*, I hereby order that the landlord provide the tenant with a key to the storage area.

As to the odours from the cats, the landlord submitted very little evidence in support of this claim and I make no finding on the issue.

I have heard no evidence that warrants restricting the landlord's access to the rental unit.

I decline to award the tenant's filing fee on this matter as I find her conduct and that of her guest substantially contributed to the creation of this dispute.

Conclusion

1. The Notice to End Tenancy of October 25, 2011 is set aside.
2. The landlord is ordered to provide the tenant with a key to the storage area.

3. The tenant's request for recovery of the filing fee for this proceeding from the landlord is declined.
4. The request to restrict the landlord's access to the rental unit 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: November 21, 2011.

Residential Tenancy Branch