



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF
 CNC, MNDC, ERP, LRE, O

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is for an order of possession for cause, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation due to damage or loss and recovery of the filing fee. The application by the tenant is to cancel a notice to end tenancy for cause, money owed or compensation for damage or loss, for the landlord to make emergency repairs, suspend or set conditions for the landlord's right to enter and other.

The tenant attended the conference call hearing but the landlord did not. As the landlord had filed a cross application and that hearing was set for the same date and time with the same conference call codes, I find that the landlord had been informed of the date and time of the hearing and the hearing proceeded in their absence.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This tenancy began July 15, 2011 with monthly rent of \$750.00 and the tenant paid a security deposit of \$375.00.

On December 1, 2011 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause:

- The tenant has been repeatedly late paying rent;
- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The tenant has put the landlord's property at significant risk;

- The tenant has not done required repairs of damage to the unit/site;
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The tenant testified that his rental unit was neat and clean and that he had washed all the floors and kitchen surfaces with bleach. The tenant stated that his rental unit is not in the unsanitary condition that is reflected in the landlord's photographic evidence and that he is only 'one guy coming and going'.

The tenant also stated that his rent has not been late all the times the landlord says it was as his rent is due on the 15th and not the 1st of the month and this is noted in the tenancy agreement.

The tenant stated that he had not paid the December 2011 rent as sometime in November 2011 his \$500.00 cash went missing from his rental unit. The tenant could not prove how the money had gone missing and could only state that the money had been rolled up with his receipts and that the landlord had been in his rental unit in November.

The tenant stated that emergency repairs are not needed in the rental unit therefore this portion of the tenant's application is dismissed.

The tenant did state that his front door was not secure and anyone could break in. The tenant also stated that there is not a separate mailbox for his mail and that the landlord does not give him his mail.

The tenant stated that the landlord is always entering his unit without providing proper notice however he could not provide any dates and times of when this has happened.

The tenant stated a number of times in the hearing that he was being poisoned however if such a thing was occurring and could be proven it would be a criminal matter and not fall under the jurisdiction of the Residential Tenancy Act.

Analysis

Based on the documentary evidence and undisputed testimony of the tenant, I find on a balance of probabilities that the tenant has met the burden of proving that they have grounds to have the notice to end tenancy for cause set aside. The tenant maintained that his rental unit was neat and clean and not in the condition reflected in the landlord's photos. The tenancy agreement signed by the landlord and tenant note that the rent is due on the 15th of the month and not the 1st therefore the tenant has paid the rent late twice only and that is not sufficient to uphold a notice to end tenancy for repeated late payment of rent. Therefore with no testimony from the landlord to dispute the tenant's

testimony, I find that there is insufficient evidence to uphold the December 1, 2011 Notice to End Tenancy for Cause.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

In regards to the tenant's monetary claim for loss; I find that the tenant has not provided sufficient evidence that the landlord is or was responsible for this loss therefore this portion of the tenant's application is dismissed without leave to reapply.

The tenant stated that the door to the rental unit is not secure and that is a matter that the landlord must check and make any required repairs to no later than January 15, 2012. The landlord must also supply a separate mailbox for the rental unit no later January 15, 2011.

In regards to the tenants request to suspend or set conditions on the landlord's right to enter, I find that the tenant had not provided evidence of the landlord entering the rental unit without providing proper notice. It must be stressed however that if this is fact happening, the landlord must stop this action and follow the provisions as outlined in section 29 of the Act.

Conclusion

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy for Cause dated December 5, 2011 with the result that the tenancy continues uninterrupted.

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: December 22, 2011

Residential Tenancy Branch