



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, OPR, MNR, 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 March 5, 2012 for:

1. An Order cancelling a Notice to End Tenancy – Section 46;
2. An Order for the Landlord to comply with the Act - Section 65; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 8, 2012 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. 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.

Issue(s) to be Decided

Is the Notice to end tenancy valid?

Is the Tenant entitled to an Order that the Landlord comply with the Act?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy began on March 1, 2012 for a fixed term to February 28, 2012. Rent in the amount of \$1,250.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount

of \$625.00. On January 15, 2012, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use, which notes an effective move-out date of March 14, 2012. After the Tenant informed the Landlord that the correct date should be March 31, 2012, the Parties signed a mutual agreement to end the tenancy on March 31, 2012. The Landlord did not provide the Tenant with a month's free rent and relying on the 2 Month Notice, the Tenant did not pay the rent for March 2012. On March 2, 2012, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent and utilities. The Landlord gave the Tenant a demand letter for January utilities owing on March 1, 2012. The Tenant does not dispute that utilities are owed. The Landlord states that additional utilities will be owed as well for February and March 2012. The Tenant does not dispute that utilities are owed and states that these will be paid upon provision of the bill to the Tenant. The Tenant does not dispute that the tenancy will end on March 31, 2012 at 1:00 p.m.

There is no dispute that the tenancy agreement includes shared laundry facilities. The Tenant states that since the beginning of March, the Landlord has denied access to the laundry facilities. The Tenant states that these facilities are essential as she has a small child. The Landlord disputes that access to the laundry room has been restricted and states that the Tenant can always come to the Landlord's door to access the laundry if the laundry door is locked.

The Tenant states that persons attending the Landlord's unit located in the same building as the Tenant always come to the Tenant's door as the Landlord does not answer their door. The Tenant also states that the Landlord attended at the Tenant's door on March 2, 2012 and rang the doorbell continually. The Tenant asks that the Landlord be ordered to comply with the Tenant's right to quiet enjoyment of the unit. The Landlord does not dispute these facts and agrees that the Landlord will ensure the Tenant's rights.

Analysis

Section 51 of the Act provides that where a landlord ends a tenancy for landlord's use of property, the Tenant is entitled to receive from the landlord on or before the effective date of the notice, an amount equivalent to one month's notice. Further, this section provides that a tenant may withhold this amount from the last month's rent. As the Tenant withheld rent for the last month of the tenancy following the receipt of the Landlord's 2 Month Notice, I find that the Tenant was not required to pay for March 2012 rent. As such, I find that the 10 Day Notice to End Tenancy is not valid and I dismiss the Landlord's claim to an order of possession and a monetary order in relation to rent. I give the Landlord leave to reapply in relation to the utilities. As the Landlord's application has been unsuccessful, I decline to award recovery of the filing fee.

Section 27 of the Act provides that a landlord must not terminate or restrict a service if the service or facility is essential to the tenant's use of the rental unit. Given the evidence of the Parties in relation to the laundry facilities, I find on a balance of probabilities that the Landlord has denied the Tenant access to those facilities and I order the Landlord to provide the Tenant with unrestricted access to the laundry facilities until the end of the tenancy.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment. As the Landlord has not disputed that the Tenant has been disturbed by persons attending the Landlord's unit and has agreed that the Tenant has such a right, I direct the Landlord to ensure that callers to the Landlord's unit do not attend the Tenant's unit for access to the Landlord to the end of the tenancy.

As the Tenant has been successful with the application, I find that the Tenant is entitled to recovery of the \$50.00 filing fee and I order the Landlord to pay the Tenant \$50.00 before March 31, 2012.

Conclusion

The Notice to End Tenancy for Unpaid Rent is cancelled and the tenancy continues to 1:00 p.m. on March 31, 2012.

I Order the Landlord to pay the Tenant \$50.00 before March 31, 2012.

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: March 21, 2012.

Residential Tenancy Branch