



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for compensation for damage or loss under the Act, regulations or tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on April 7, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is there damage or loss to the Tenant and if so how much?
3. Is the Tenant entitled to compensation and if so how much?

Background and Evidence

This tenancy started on February 1, 2011 as a fixed term tenancy with an expiry date of February 1, 2012 and has renewed as a verbal month to month tenancy. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security although a security deposit of \$600.00 is required by the tenancy agreement. The Landlord’s Agent said a payment schedule for the security deposit was agreed to, but the Tenant has not made the payments.

The Landlord’s agent said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated February 7, 2012. He said the Notice was served on February 7, 2012, by personal delivery to the Tenant’s daughter who was 11 years old at the time. The Landlord was told they did not meet the service requirements under section 88 on the Act as a document can be service in person to an occupant of the rental unit other than the Tenant, but that occupant must be an adult who apparently resides with the person. The Effective Vacancy date on the Notice is March 7, 2012. The Tenant is living in the unit and the Landlord said they want to end the tenancy. The Landlord’s Agent requested an Order of Possession if the Tenant’s application is unsuccessful.

The Landlord continued to say that they owner of the property received a letter from the municipality that instructed her to decommission the cooking facilities in the secondary suit. As well the owner said that she had spoken with the building inspector and he said that one of the tenants would have to move out of the unit. The Landlord's Agent said they believed that this was an order from the municipality to vacate one of the tenants from the unit; therefore the Landlord's Agent issued a 1 Month Notice to End Tenancy for Cause with the reason being an order from the government to vacate the premises.

The Tenant said the Landlord's Agent did not serve her the Notice to End Tenancy correctly and the letter from the municipality is only to decommission the cooking facilities in the secondary suit, it is not to vacate the unit; therefore the Tenant said the Notice to End Tenancy is not valid for two reasons.

The Tenant continued to say the tenants in the lower suit have disturbed her and her family to the extent that their quiet enjoyment of the rental unit has been compromised. The Tenant said she could hear children shouting, cupboard doors slamming and adults talking after 11:00 p.m. on some nights. The Tenant continued to say the tenants in the lower unit do not party, but she can hear them talking loudly. As a result the Tenant is making a monetary claim against the Landlord for loss of quiet enjoyment of her rental unit. The Tenant said she has made verbal complaints to the owner and the Landlord's Agent about the noise. The Tenant is claiming \$300.00 for each month of July through November, 2011 for a total of \$1,500.00 and the Tenant is claiming \$100.00 for each month of December, 2011, January, 2012 and February, 2012, for a total of \$300.00. The Tenant's total claim for loss of quiet enjoyment of the rental unit is \$1,800.00. The Landlord's Agent said that they have heard complaints from the tenants in both the units about noise and they believe the tenants just do not get along as they did at the beginning of the tenancy in the lower unit.

As well the Tenant is claiming additional hydro costs as the tenants in the lower unit have developed a room as additional living space and are heating it when it was not heated previously. The Tenant is claiming an addition \$79.00 for extra hydro costs.

The Landlord's Agent said that the hydro account is in the Tenants name and the hydro arrangements are between the Tenant and the tenants in the lower unit. The Landlord's Agent said they are not responsible for the hydro bill or how it is divided between the tenants.

A number of other issues were brought up regarding this tenancy, but none of them were related to this application, so both parties were told and they understood that they could make additional application for dispute resolution to resolve these other concerns.

Analysis

It appears from the testimony at the hearing that communications between the Tenant and the Landlord and the Landlord's Agent has broken down. There was contradictory testimony provided by both the Tenant and the Landlords regarding the facts of the situation. It is apparent the Landlords did not properly serve the Notice to End Tenancy because they served it on a minor and section 88 of the Act says a Document can be serviced to an adult who is apparently living in the rent unit. Consequently the 1 month Notice to End Tenancy date February 7, 2012 is not valid for incorrect service of the document. As well the reason or cause given on the 1 Month Notice to End Tenancy is that the unit must be vacated because of a government order. This is not the case as the letter from the municipality is only to decommission the cooking facilities in the secondary unit and it says nothing about ordering the occupants to vacate the unit. Consequently I find the Tenant has established grounds for the 1 Month Notice to End Tenancy for Cause to be cancelled. The Notice to End Tenancy dated February 7, 2012 is cancelled and the tenancy is ordered to continue as verbal month to month tenancy as it is at the present time.

With respect to the Tenant claim for compensation for loss of quiet enjoyment of the rental unit the Tenant gave affirmed testimony that the disturbance is a result of children making noise in the lower unit, cupboards closing and adults in the lower unit talking after 11:00 at night. The Tenant said she had made verbal complaints to the owner and Landlord's Agent but she has not complained in writing. From the Tenants description of the noise coming from the lower unit it appears the noise is not excessive for this type of rental unit and the Tenant has not felt the need to make a formally complain in writing to the Landlords. For a monetary claim to be successful the disturbance must be **unreasonable, serious or excessive**, I find that the Tenant has not established grounds to prove the disturbance from the lower unit have met the level required to be successful for compensation and as a result the Tenant's claims for compensation for loss of quiet enjoyment in the amount of \$1,800.00 are dismissed with leave to reapply.



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Further I accept the Landlords testimony that the Tenant's claim for the increase costs of hydro is a dispute between the tenants and it is not the responsibility of the Landlords. As a result the Tenant's claim for \$79.00 for increased hydro costs is dismissed without leave to reapply.

As the Tenant has only been partially successful in this matter I order the Tenant to bear the cost of the \$50.00 filing fee for this proceeding, which the Tenant has already paid.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated February 7, 2012 is cancelled and the tenancy is ordered to continue as a verbal month to month tenancy.

I dismiss the Tenant's monetary claim of \$1,800.00 for loss of quiet enjoyment.

I dismiss the Tenant's monetary claim for \$79.00 for increase hydro costs.

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*.

Dispute Resolution Officer