



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;
2. A Monetary Order for compensation - 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 the monetary amounts claimed?

Background and Evidence

On March 28, 2012, the Tenant was served with a One Month Notice to End Tenancy for Cause (the “Notice”) with an effective move-out date of April 30, 2012. There is no dispute that the causes listed on the Notice are as follows:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The Landlord states that several complaints have been received by several other tenants about noise from arguing and yelling coming from the Tenant's unit, doors being slammed by the Tenant and the Tenant being drunk and trying to enter other units in the building. The Landlord states that two Tenants have complained in writing but that these tenants did not wish to have their complaints submitted as evidence as they wish to remain anonymous out of fear of reprisal. The Landlord states that these fears are based on what has been seen and heard of the Tenants aggressive personality. The Landlord states further that the actions of the Tenant in mistakenly attempting to enter the wrong unit has caused significant fear to the residents of those units. The Landlord states that the problems with the Tenant have occurred in an increasing manner over the past six months and that the Landlord has personally witnessed the Tenant on at least six occasions to be slamming doors and has personally witnessed on at least 6 occasions, yelling and screaming coming from the Tenant's unit.

The Tenant states that it was only one occasion that he mistakenly tried to use his key on a wrong unit and that this was accidentally caused by the dim hallway lighting and poorly marked unit numbers. The Tenant states that on 3 or 4 occasions other tenants have tried his door in mistake as well. The Tenant does not deny arguing with his partner in the unit but denies screaming or arguing so loud as to bother anyone. The Tenant states that the doors in the building slam loudly as there are no rubbers stoppers for the doors and on occasion when he has had his hands full, the door will slam but that nothing is done intentionally.

The Tenant states that as a result of the letter sent to the Tenant by the Landlord that indicates friends of the Tenant are smoking crack outside the building, the Tenant has been called a crack head by other tenants. The Tenant states that he does not and never has used crack and that as a result of the name calling, the Tenant became afraid and decided to move out of the unit. The Tenant states that he did not inform the Landlord that he would be moving out of the unit. The Tenant states that he moved most of his belongings out of the unit but a few items are left and that the Tenant will be out of the unit by April 30, 2012. The Tenant claims compensation for having to move

out of the unit as a result of the Landlord's false accusations and claims moving expenses of \$245.70. The Tenant states that he has lost two days work as a result of having to make the application for dispute resolution and to attend the Hearing and claims \$100.00 to \$200.00 for this loss. The Tenant states that last month, with the permission of the Landlord and the provision of paint from the Landlord he painted some areas of the unit. The Tenant states that although the Landlord did not agree to pay for the Tenant's time in painting, that this time was spent with a view to living in the unit for some time. As a result of having to move out of the unit, the Tenant claims \$100.00 for the painting job.

The Landlord states that the Notice was given to the Tenant following complaints by other tenants and that there is just cause for the Landlord to end the tenancy. The Landlord denies that the actions of the Landlord have caused the Tenant to move out of the unit. The Landlord denies any liability for the Tenant's claims for losses.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. While the Tenant has disputed the Notice as being invalid, given the evidence of the Tenant, I find that the Tenant chose to move out of the unit before a finding could be made on whether the Notice was valid. As a result, I find that determining whether the Notice is valid is no longer necessary as the Tenant has voluntarily chosen to move out. I therefore dismiss the Tenant's claim to cancel the Notice..

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Although the Tenant argues that he moved out of the unit as a result of being afraid due to other tenant's calling him a

crack head, I find that this does not substantiate that the Landlord's actions have caused the Tenant to move out of the unit. As a result, I dismiss the Tenant's claim for compensation for moving costs. As the loss of work claimed by the Tenant did not arise from any act or negligence of the Landlord but as a result of the Tenant's choice to dispute the Notice, I dismiss this claim of the Tenant. Finally, based on the Tenant's evidence that the Landlord had not agreed to pay the Tenant for his time in painting the unit, I cannot find that the Tenant has substantiated any loss as caused by the Landlord and I dismiss this part of the application as well. As none of the claims made in the Tenant's application have met with success, I decline to make an award in relation to the filing fee.

Conclusion

The Tenant's application 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: April 24, 2012.

Residential Tenancy Branch