

DECISION

Dispute Codes CNC, MNDC, RP, PSF, FF, O

Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause, a monetary order request for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order for the Landlord to make repairs to the unit, site or property, to provide services or facilities required by law, the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the evidence submitted by the other party, I am satisfied that both parties have been properly served with the notice of hearing and evidence packages under the Act.

During the hearing discussions between the parties resolved some issues. The Tenant is withdrawing portions of her application which are for the Landlord to make repairs to the unit, site or property as those concerns have been resolved and her request for the Landlord to provide services or facilities required by law has been withdrawn. No further action is required for these aspects of the Tenant's application.

The Tenant has also amended her monetary claim to \$185.26 for paint purchased at the request of the Landlord. Both parties also agreed that the Landlord shall issue a cheque for \$185.26 to the Tenant for repayment of this amount and that it will be mailed/ delivered to the Tenant within 7 days of this hearing.

The Landlord has stated that they wish for the Tenant to vacate the rental unit on the effective date of the notice.

Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?

Background and Evidence

This Tenancy began on July 1, 2008 on a fixed term tenancy until July 1, 2009 then thereafter on a month to month basis as shown in the submitted signed tenancy agreement.

As neither party has submitted a copy of the 1 month notice to end tenancy and have agreed to resolve this application without a copy before the Residential Tenancy Branch, both parties have agreed to the following facts.

Both parties agree that the 1 month notice to end tenancy for cause was dated April 25, 2012 which was filled out and signed by the Landlord, L.S. Both parties further agreed that the Landlord posted the notice on the rental unit door and that the effective date of the notice stated is June 1, 2012. The Tenant has confirmed receipt of the notice in this manner. Both parties agree that the following reasons for cause were selected on the notice.

- 1) Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another tenant or the landlord.
- 2) Tenant has engaged in illegal activity that has, or is likely to:
 - damage the landlord's property.
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The Landlord states that they are responding to a complaint by the basement tenant that he feels that the upstairs tenant is harassing him over issues regarding the use of common areas (the backyard). The witness/tenant, P.M. states that these issues occurred on or about April 16, 2012 over the destruction/ removal of a playhouse in the back yard. The Tenant confirms that a dispute over the removal of the playhouse occurred. The Tenant states that there was an agreement that the Tenant had the exclusive use of the backyard. The Landlord disputes this stating that all common areas are equally shared. The Tenant states that this was an agreement between her and the previous Tenants and then the witness when he started his tenancy. The witness states that there was no such agreement. The witness states that the tenant has attended his door late at night on two occasions yelling at him. The witness also states during this same time period that the tenant has smashed or hit their floor (his ceiling) repeatedly making loud noises late at night disturbing him on two occasions. The Tenant disputes this. The witness also states that the Tenant painted a mail box that he purchased. The witness also states that he was reimbursed by the Landlord that as this purchase was to become a permanent fixture of the property. The Tenant confirms that she did in fact paint the mailbox without permission.

Analysis

As explained to the parties during the hearing the onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as they have served a notice to end tenancy upon the Tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

I find on a balance of probabilities that the Landlord has failed to establish his reasons for cause. The Landlord has provided no relevant evidence for their reasons for any illegal activity and on this basis, I dismiss this reason for cause given. As told by both parties, the circumstances for this dispute arise from a specific time frame of April 15-17, 2012 where the Landlord claims that a significant interference / unreasonable disturbance occurred between their two Tenants. All parties agree that no further incidents have taken place. A temporary discomfort or inconvenience does not constitute a basis for this claim. The Landlord would have to establish a frequent and ongoing interference/disturbance by the Tenant. On this basis, I find that the Tenant has established her claim for an order to cancel the notice to end tenancy for cause dated April 25, 2012. The notice is set aside and the tenancy shall continue with full force and effect.

The Tenant is entitled to a monetary order for \$50.00 in the recovery of the filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The notice dated April 25, 2012 is set aside and the tenancy shall continue.

The Tenant is granted a monetary order for \$50.00.

Both parties have agreed that the Landlord shall send a cheque for \$185.26 within 7 days of the date of this hearing for the repayment of paint 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*.

Dated: May 11, 2012.

Residential Tenancy Branch