



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant requesting orders to cancel a 10 day Notice to End Tenancy for unpaid rent, for the Landlord to comply with the Act and to authorize the Tenant to change the locks in the rental unit.

The Tenant was represented by an Advocate at the hearing. Only the Advocate for the Tenant appeared at the hearing, as the Tenant was ill. The Advocate gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Advocate testified that he served the Landlord with the Notice of Hearing and Application of the Tenant by registered mail, sent on July 25, 2012. The Advocate submitted documentary evidence indicating the Landlord signed for the registered mail on July 31, 2012. I find the Landlord has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

The Advocate for the Tenant explained at the outset of the hearing that the Tenant was withdrawing the request for an order to change the locks at the rental unit. Therefore, this portion of the Tenant's Application is dismissed with leave to reapply.

Issue(s) to be Decided

Should the 10 day Notice to End Tenancy be cancelled?

Is the Tenant entitled to an order compelling the Landlord to comply with the Act?

Background and Evidence

The Advocate for the Tenant testified that the Landlord had failed to appear for the hearing and therefore, there was insufficient evidence from the Landlord what the amount of alleged unpaid rent was or that that rent had not been paid.

The Advocate also explained that the Tenant was not served in accordance with the Act. While the 10 day Notice to End Tenancy indicates it was served in person, the Tenant alleges she found it on the floor of the rental unit. The Tenant informed the Advocate that the entry door is sealed quite tight and this document could not have been slipped under the door.

The Tenant informed the Advocate that the Landlord often enters the rental unit without giving her the required Notice. She has found her property disturbed on more than one occasion. The Advocate explained that the Tenant is a single mother, and is very concerned that the Landlord is not giving her the required Notice when entering the rental unit.

Analysis

Based on the above, the uncontradicted testimony and evidence, and on a balance of probabilities, I find as follows.

I find that the Landlord has provided insufficient evidence to support the 10 day Notice to End Tenancy. Therefore, **I order that the 10 day Notice to End Tenancy for unpaid rent, dated July 22, 2012, is cancelled and is of no force or effect.**

I also order the Landlord to comply with the Act, and in particular, **I order the Landlord to comply with section 29 of the Act to enter the rental unit.** Section 29 governs the Landlord's right to enter the rental unit and states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I caution the Landlord that if he does not comply with section 29 of the Act, the Tenant may bring an Application requesting to change the locks to the rental unit, and, the Tenant may also request a monetary order against the Landlord for breach of her right to quiet enjoyment of the rental unit under section 28 of the Act. Section 28 states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As explained to the Advocate for the Tenant during the hearing, the Tenant must also comply with section 26 of the Act and must pay her rent on the date it is due. The Tenant may not withhold rent unless she has an order from a Dispute Resolution Officer allowing her to do so, or if the Tenant has some other authority under the Act to do so.

Conclusion

The 10 day Notice to End Tenancy dated July 22, 2012, is cancelled.

The Landlord is ordered to comply with the Act and not enter the rental unit unless done so in accordance with section 29 the Act. The Landlord is cautioned that breach of the Tenant's quiet enjoyment of the rental unit may result in the Tenant receiving a monetary order against the Landlord.

The Tenant is cautioned that they may not withhold rent with authority under the Act to do.

I have also provided the Landlord with a copy of a guidebook to the law of residential tenancies for information purposes.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 23, 2012.

Residential Tenancy Branch