



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, FF*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and the tenant applied for an order to cancel the notice to end tenancy. Both parties applied for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside?

Background and Evidence

The tenancy started on October 01, 2011 for a fixed term of one year. In June 2012, the landlord listed the house for sale and met with the tenant to take measurements and photographs. The tenant agreed to show the unit on her days off from work and provided the landlord with her work schedule.

The realtor attempted to show the unit on one of the days that the tenant was not available as per her schedule. The realtor did provide adequate notice to the tenant but was unable to show the unit as the gate was locked. The tenant stated that she is forced to lock her gate to keep her dog from getting out.

On July 31, 2012 the landlord served the tenant with a one month notice to end tenancy for cause. The reason for the notice is that the tenant has engaged in illegal activity that has jeopardized a lawful right of the landlord.

The landlord explained that the reason for the notice was that despite serving the tenant 24 hour notice to enter the property, the tenant did not allow the landlord access by putting a lock on the gate to the property.

Over the last two months, the relationship between these two parties progressively deteriorated which made resolution of tenancy related issues, at best frustrating for both parties.

During the hearing the tenant agreed to allow the landlord's realtor to show the property with 24 hour notice and also agreed to provide the landlord with a key to the lock on the gate.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the tenant has engaged in illegal activity that has jeopardized a lawful right of the landlord.

Based on all the evidence before me, I accept that the tenant denied the landlord access to show the rental unit and put a lock on the gate but I am not satisfied that these actions of the tenant were deliberate and that they justify bringing this tenancy to an end. The tenant offered to allow showings as per her work schedule and locked the gate to keep her dog in.

I therefore allow the tenant's application and set aside the landlord's notice to end tenancy dated July 26, 2012. As a result, the tenancy shall continue in accordance with its original terms.

I find it timely to put the tenant on notice that, the landlord must be granted access with adequate notice and be provided with a key to the lock on the gate.

Since the landlord has not proven her case, she must bear the cost of filing her application. The notice was set aside and therefore the tenant is entitled to the recovery of the filing fee. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue.
I also grant the tenant a monetary order in the amount of **\$50.00**.

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: September 07, 2012.

Residential Tenancy Branch