



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 dealt with a tenant's request to cancel a 1 Month Notice to End Tenancy for Cause and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord had acknowledged receiving the tenant's evidence package as she declared and I did consider the content in making this decision.

The landlord also submitted an evidence package to the Residential Tenancy Branch and claimed he served it upon the tenant as well; however, the tenant stated that she had not received any documentation from the landlord except for the Notice to End Tenancy. Despite asking the landlord more than once about service of his evidence upon the tenant I found the landlord did not provide a sufficiently clear or specific response in order to satisfy me that he had served the tenant with his evidence package. Therefore, I excluded the landlord's evidence package.

Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the tenant entitled to receive compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

Since June 1, 2011 the tenant has been renting the upper floor of a house. The tenant currently pays rent of \$1,100.00 on the 1st day of every month. On October 1, 2012 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause

(the Notice) with a stated effective date of October 31, 2012. The Notice indicates three reasons for ending the tenancy, which are:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has, or is likely to:
 - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

With respect to the above reasons I was provided the following submissions by each of the parties, as summarized below:

Unreasonable number of occupants

It is undisputed the tenant and another male occupant resided in the house at the same time. The rental unit is the upper level of the house which has three bedrooms. There is no provision specifically prohibiting the tenant from having another occupant in the tenancy agreement.

The landlord was of the position the tenant is the only named tenant so only she can reside in the rental unit. The tenant disagreed with this position.

Illegal activity

The landlord did not provide evidence that the tenant has engaged in illegal activity. The tenant submits that she has not done anything illegal.

Significant Interference with the landlord

It is undisputed that the house formerly contained an illegal basement suite and that the landlord was ordered by the City to remove the basement suite. The parties provided consistent testimony that since the basement suite was ordered to be removed the landlord has approached the tenant about renting the entire house for an increased amount of rent but that the parties could not reach an agreement. Now the landlord wishes to occupy the basement area for his own purposes, including: sitting in the basement areas and using the bathroom facilities. The parties provided opposing

testimony as to whether the door between the upper unit and the basement can be locked if the landlord occupies the basement.

The landlord has alleged that the tenant is interfering with his ability to use the basement area and has called the police when he attended the property.

The tenant acknowledged that she only rents the upper level and does not use the basement; however, she was told by the City building inspector that the upper and basement level must be free-flowing and that the basement cannot be occupied if the door between the units has a lock. The landlord is trying to occupy the basement area and leave a lock on the door. The tenant has no objection to the landlord proceeding to take steps to legalize the use of the basement area.

The tenant acknowledged calling the police and explained that the landlord has previously been ordered to give the tenant 24 hour notice to enter the house. The landlord served her with a 24 hour notice but then proceeded to inspect the property immediately thereafter. The tenant asked the landlord to return on the date indicated on the 24 hour notice. When he would not leave she called the police. The tenant permitted the landlord in the rental unit for an inspection on the date indicated on the 24 hour notice.

The landlord responded by stating the building inspector told him he could have a lock on the adjoining door if it was lockable only from the tenant's side. The landlord proceeded to introduce other options, including:

1. Installing a wall between the upper unit and basement;
2. Issuing a 2 Month Notice to End Tenancy for Landlord's Use as he indicated he will move into the house.
3. Negotiating a tenancy agreement for rental of the entire house to the tenant or end the tenancy.

I encouraged the landlord to determine the legality of installing a wall before doing so. The landlord was informed of his right to issue a 2 Month Notice if he intends to move into the rental unit and I informed both parties that the tenant has the right to dispute such a Notice. Both parties were informed that they are liberty to negotiate a new tenancy agreement if they agree upon terms of tenancy or to mutually agree to end the tenancy.

Monetary Claim

The tenant submitted that this is the third Notice to End Tenancy the landlord has served since June 2012 and the second dispute resolution hearing. The first Notice was a 2 Month Notice which was invalid and did not proceed to dispute resolution. The landlord then served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent which she successfully disputed pursuant to a decision issued August 24, 2012.

The tenant seeks to recover the costs and loss associated to mailing costs, filing fees and loss of income for this proceeding and the previous dispute proceeding of August 24, 2012.

Analysis

Upon consideration of the evidence presented to me I provide the following findings and reasons.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Unreasonable number of occupants

I find that two people living in a three bedroom unit is not an unreasonable number of occupants.

I reject the landlord's position that the tenant is precluded from having occupants reside with her. In order to end the tenancy for such a reason the landlord must show that the parties had agreed to such a term and then put the tenant on written notice to correct the breach of a material term. In the absence of a written tenancy agreement that prohibits additional occupants I find that the tenant is permitted to have occupants reside with her as long as the number of occupants is not unreasonable.

Illegal Activity

I was not presented evidence the tenant has engaged in illegal activity and I do not consider this reason further.

Significant Interference with the landlord

Since the landlord wishes to use the basement area to sit and use the bathroom facilities I find it reasonable that the tenant be afforded adequate separation of the two units. The landlord is of the position that the current hook-type lock on the tenant's side of the adjoining door is sufficient separation. The tenant is of the position the use of a lock is illegal while the basement area is occupied.

I consider sitting in the basement area and using the bathroom facilities to be occupying the basement. I find I was provided insufficient evidence to conclude there is adequate separation of the upper level and the basement area if the landlord were to occupy the basement area. The tenant's insistence that the landlord provide her with a 24 hour notice to enter the basement area does not satisfy me that the tenant is significantly interfering with the landlord's right to use the property. Rather, I find that it is the current construction and zoning of the building that is interfering with the landlord's ability to use and occupy the basement.

In light of the above, I grant the tenant's request to cancel the Notice to End Tenancy issued October 1, 2012. Nevertheless, I offer the following as one suggested resolution to this dispute.

If the landlord were to obtain written instruction or direction from the City as to the lawful use of the basement area and lawful separation of the two spaces given the upper level is occupied by the tenant, such information could then be shared with the tenant, and:

- Should the City's written instruction or direction indicate that the existing hook-type lock is acceptable for the landlord to occupy the basement area then the tenant must not require a 24 hour notice for the landlord to enter the basement area.
- Should the landlord be required to alter the property in order to legally occupy the basement area then it is upon the landlord to make those alterations so as to comply with the requirements of the appropriate authority and/or code.

Monetary Claim

Other than the filing fee, costs associated to preparing or participating in dispute resolution proceedings are not recoverable. I note that the tenant was awarded the filing fee for the previous hearing and I make no award for other costs associated to participating in that hearing. Nor do I make an award for recovery of other costs or losses associated to this hearing with the exception of the filing fee. Therefore, the tenant is authorized to withhold \$50.00 from a subsequent month's rent in satisfaction of this award.

I caution the landlord that issuing several Notices to End Tenancy without sufficient merit may be grounds to find the tenant has suffered a loss of quiet enjoyment. Loss of quiet enjoyment may entitle the tenant to financial compensation from the landlord. The tenant is at liberty to seek compensation for loss of quiet enjoyment by filing a future Application for Dispute Resolution as appropriate.

Conclusion

The Notice to End Tenancy is cancelled and the tenancy continues. The tenant may deduct \$50.00 from a subsequent month's rent to recover the filing fee paid for this application.

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: November 08, 2012.

Residential Tenancy Branch