



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPC, CNC, MNDC, OLC, FF

Introduction

This hearing was convened in response to cross applications.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; for a monetary Order for money owed or compensation for damage or loss; an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing the Application for Dispute Resolution.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order and to recover the fee for filing the Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End Tenancy be set aside or should the Landlord be granted an Order of Possession?

Is the Tenant entitled to compensation for storage fees and for reduced access to the rental unit?

Is either party entitled to recover the fee for filing the Landlord's Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that a One Month Notice to End Tenancy for Cause was personally served to the male Tenant on September 27, 2012, which declared that the Tenant must vacate the rental unit by October 31, 2012. The reasons cited on the Notice to End Tenancy for ending the tenancy were that the Tenant has allowed an unreasonable number of occupants in the unit; that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; and that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time. During the hearing the Landlord stated that she does not wish to end this tenancy on the basis that the Tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

The Landlord stated that her primary reason for ending the tenancy is because the Tenant has allowed a third person to live in the rental unit, which is a two bedroom unit. The Landlord acknowledged that there is nothing in the tenancy agreement that prevents the Tenant from allowing a third person to move into the rental unit.

The Landlord stated that she wishes to end this tenancy, in part, because the third occupant of the rental unit regularly disturbs her sleep when she opens/closes the gate leading to the rental unit and she opens/closes the door to the rental unit. The female Tenant acknowledged that the Tenants and their guest(s) do access the rental unit late at night but she stated that they are not unusually loud.

The Landlord stated that she wishes to end this tenancy, in part, because the male Tenant yelled at her in July of 2012 while expressing his concern about a newly installed gate, which made her feel frightened and intimidated. The male Tenant agrees that he expressed concerns about the new gate but he stated that he did not raise his voice when he expressed those concerns.

The Landlord stated that she wishes to end this tenancy, in part, because she turned up the heat sometime during the summer and the male Tenant was "sarcastic" when he asked her if they needed the heat on. The male Tenant agreed that he did send the landlord a text expressing concerns about the heat being turned on, but he stated that the text and their subsequent conversation was polite and respectful.

The Landlord stated that she wishes to end this tenancy, in part, because the Tenant regularly leaves the newly installed gate ajar. The male Tenant agrees that they leave the gate ajar when they are expecting company or a delivery, which occurs approximately once per week. The Landlord agrees that the Tenant has never been told, in writing, to keep the gate closed at all times.

The Landlord stated that all of these interactions have left her feeling intimidated and frightened by the Tenant, and that she no longer feels comfortable sharing living accommodations with the Tenant.

The Tenant is seeking compensation, in the amount of \$350.00, for “storing” a fireplace insert in the rental unit. The Landlord and the Tenant agree that the rental unit is equipped with a fireplace insert, which was in place at the start of the tenancy. The male Tenant stated that the insert does not work and the Landlord stated that it does work. The male Tenant stated that at the start of the tenancy the Landlord told them the insert would be replaced sometime in the summer. The Landlord stated that at the start of the tenancy she told the Tenant the insert would be replaced at some point in the future, although she did not provide a date for the replacement.

The Tenant is seeking compensation, in the amount of \$130.00, because their access to the rental unit has been restricted by a gate. The Landlord and the Tenant agree that the Landlord installed a metal gate in July of 2012; that the gate can be locked; and that the Landlord has not insisted that the gate remain locked. The Tenant contends that this gate restricts access to their rental unit as it has a “hidden latch” that prevent some guests and delivery persons from accessing the front door of the rental unit.

Analysis

Section 47(1)(c) authorizes a landlord to end a tenancy if there are an unreasonable number of occupants in a rental unit. I find that the Landlord has failed to establish that there are an unreasonable number of occupants in the rental unit. Three people living in a two bedroom suite is a common living arrangement and, in my view, this living arrangement does not constitute an unreasonable number of occupants. In reaching this conclusion I was heavily influenced by the absence of evidence that shows the unit is too small to accommodate this number of people or that shows there is a term in the tenancy agreement that limits the number of occupants to two or less people.

Section 47(1)(d)(i) authorizes a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant significantly interferes with or unreasonably disturbs another occupant or the landlord.

While I accept the Landlord’s testimony that she is frequently awakened when a guest of the Landlord accesses the rental unit, I am not satisfied that this is due to unreasonable noise from the Tenant or a guest of the Tenant. I find that the Landlord must expect some noise when living accommodations are shared, particularly when the noise is associated with access and egress. I find that the Landlord has failed to establish that the level of noise is unreasonable and I therefore cannot conclude that it constitutes a significant interference.

I find that the Landlord submitted insufficient evidence to show that the male Tenant yelled at her when he expressed his concern about a newly installed gate. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates

the Landlord's testimony that the Tenant yelled at her or that refutes the Tenant's testimony that he did not raise his voice during their discussion. As the Landlord has failed to establish that the male Tenant yelled at her, I cannot conclude that this interaction serves as grounds to end the tenancy.

I find that the Landlord submitted insufficient evidence to show that the male Tenant was disrespectful when he asked her to turn down the heat this summer. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's testimony that the Tenant was sarcastic during this interaction or that refutes the Tenant's testimony that the interaction was respectful. As the Landlord has failed to establish that the male Tenant acted inappropriately during this conversation, I cannot conclude that this interaction serves as grounds to end the tenancy.

While I am satisfied the Landlord and the Tenant are engaged in an on-going dispute regarding security, I do not find that the Landlord currently has grounds to end the tenancy because the Tenant leaves the gate ajar. In my view, the Landlord must provide the Tenant with written notice that the gate should be left closed at all times before this could be considered grounds to end the tenancy.

Although I fully accept the Landlord's testimony that she is frightened and intimidated by the Tenant, I cannot conclude that her reaction is reasonable given the information provided by the Landlord at this hearing. When considered in its totality, I find that the Landlord has failed to establish that there are grounds to end this tenancy.

I find that this rental unit is equipped with a fireplace insert and the Tenant was never informed that the insert would be "removed", albeit they were told it would be "replaced". As the rental unit was equipped with an insert, I find that the Tenant is not entitled to compensation for "storing" the insert in the unit.

I dismiss the Tenant's claim for compensation for restricted access to the rental unit. I find that the Landlord has the right to improve the security of the residential property by installing a gate and that the Tenant can easily mitigate any inconvenience created by the gate by simply informing guests and delivery persons that the gate has a "hidden" latch.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that there are grounds to end this tenancy pursuant to sections 47(1)(c) or 47(1)(d)(i) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy, and I dismiss the Landlord's application for an Order of Possession.

As the Landlord's application for an Order of Possession has been dismissed, I dismiss the Landlord's application to recover the fee for filing the Landlord's Application for Dispute Resolution.

As the Tenant's application to set aside the Notice to End Tenancy has been granted, I find that the Tenant is entitled to recover the fee for filing the Tenant's Application for Dispute Resolution. I hereby authorize the Tenant to reduce one monthly rent payment by \$50.00 in compensation for the filing fee.

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 01, 2012.

Residential Tenancy Branch