



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, LRE, FF

Introduction

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy, to set conditions on the landlord's right to enter the rental unit and for the recovery of the filing fee. Both parties attended the hearing and had opportunity to be heard.

Issue to be Decided

Does the landlord have grounds to end this tenancy? Did the landlord provide at least 24 hours notice prior to entering the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy began on September 01, 2012. The monthly rent is \$450.00 payable on the first of each month.

On November 01, 2012, the landlord served the tenant with a one month notice to end tenancy for cause. Neither party filed a copy of the notice to end tenancy. The parties agreed that reason for the notice was because the landlord alleged that the tenant had caused extraordinary damage to the landlord's property.

The landlord stated that water dripped from the ceiling of the unit located directly below the rental unit. This leak occurred on three occasions – October 20, October 27 and November 28. The tenant stated that he had no problem with water leaks inside the rental unit and was unaware of any problems in the unit below. The landlord stated that the tenant would not allow the landlord to enter the unit to check out the cause of the problem.

The landlord agreed that he does not know the cause of the problem but believes that the tenant is being negligent.

The tenant argued that he did not create the leak and that he would have allowed the landlord access if the landlord had explained the nature of the visit. The tenant stated he was not informed of leaks in the unit below until he was served the notice to end tenancy.

Analysis

In order to support the notice to end tenancy, the landlord must prove the ground alleged, namely that the tenant has significantly damaged the landlord's property.

Based on the testimony of both parties, I find that the landlord did not notify the tenant in writing, about the leaks in the unit below. In addition, the landlord stated that he is not sure of the cause of the leaks and therefore I find that the landlord is unable to establish that the leaks are a result of negligence on the part of the tenant.

I therefore allow the tenant's application and set aside the landlord's Notice to End Tenancy dated November 01, 2012. As a result, the tenancy shall continue in accordance with its original terms.

Regarding the landlord's right to enter the rental unit, Section 29 of the *Residential Tenancy Act* states that 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.

During the hearing the landlord agreed to comply with Section 29.

Since the tenant has proven his case, he is entitled to the recovery of the filing fee. The tenant may make a onetime deduction of \$50.00 from a future rent.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue. The tenant may make a onetime deduction of \$50.00 from a future rent.

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: December 11, 2012.

Residential Tenancy Branch