



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP and MNDC

Introduction

This hearing was convened on the tenant's application to have set aside a Notice to End Tenancy for landlord use dated November 19, 2012 and setting an end of tenancy date of January 31, 2013. The tenant also sought a monetary award for reimbursement for emergency repairs and for damage or loss under the legislation or rental agreement.

As a matter of note, this tenancy was the subject of a hearing on July 31, 2012 in which the Dispute Resolution Officer granted various repair orders with a deadline of September 1, 2012, rent abatement of \$300 per month for each of the five months of the tenancy and a rent reduction of \$300 per month until the ordered repairs were completed.

Issue(s) to be Decided

Has the landlord proven that the Notice to End Tenancy was served in good faith and is an order for repair to the rental unit and monetary compensation warranted by the .submitted evidence?

Background, Evidence and Analysis

This tenancy began on April 7, 2012 as a month to month tenancy. Rent was \$850 per month and the landlord holds a security deposit of \$425.

During the hearing, the landlord gave evidence that she had served the Notice to End Tenancy of November 19, 2012 as she needed the rental unit to provide housing for her daughter.

The landlord submitted a copy of a Notice to End Tenancy for landlord use that had been served on her daughter who lives in the same community. That notice was dated October 28, 2012 and set an end of tenancy date of December 31, 2012. She stated that her daughter was currently staying in temporary housing until she is able to move in to the subject rental unit.

The tenant stated that she questioned the good faith of the Notice to End Tenancy served on her as she intended and believed that the tenancy was to be for a long term and that she had worked hard at doing improvements to the home.

However, I found that the notice in question was served in good faith and was lawful and valid and that I could not set it aside.

On hearing that determination, the landlord requested, and I find she is entitled to, an Order of Possession to take effect on January 31, 2013 in support of the notice. Section 55(1) of the *Act* compels the issuance of the Order on the landlord's oral request when a Notice to End Tenancy has been upheld and/or the tenant's application to set it aside is dismissed.

As to the tenant's monetary claim, she sought compensation totalling \$10,000 for various repairs to the rental unit and the inconvenience of the tenancy ending earlier than anticipated.

I must note that it was extremely difficult to evaluate the tenant's claims as she repeatedly interrupted the proceedings to admonish the landlord to a degree that it was necessary to mute her line three times during the hearing. She departed the hearing uttering a profanity.

I find that a substantial part of the tenant's grievances had been addressed in the previous hearing when she was awarded a \$300 monthly rent reduction to \$550 from the beginning of the tenancy. Those claims are, therefore, *Res Judicata* (previously decided).

In fact, the landlord submitted a spreadsheet detailing that the tenant had paid \$750 for the partial month of April 2012, \$800 for May, \$735.05 in June, \$500 in July and August and \$200 for each of the four months from September to December 2012. The tenant paid no rent for January 2013 but is relieved of that obligation by section 51 of the *Act* based on the notice for landlord use.

In total, the landlord's records show that the tenant has paid \$4,085.05 in rent for the duration of the tenancy vs \$7,550 that would have been due at \$850 a month with the reduced first month period.

Taking into account the \$1,500 and subsequent rent reduction awarded to the tenant from the previous hearing and \$596.67 in receipts for building and repair materials claimed by the tenant, the landlord's records show that the rent due would have been \$4,253, \$167.95 more than the tenant actually paid.

While most of the those claims arose since the July 31, 2012 hearing, the landlord stated that she had not heard from the tenant in the interim, but gave credit for the claims nevertheless.

In consideration of the previous award to the tenant and the credit given to the tenant for material expenses since, I find that the tenant has failed to prove that she is entitled to any further monetary award and that part of her claim is dismissed without leave to reapply.

Conclusion

The application is dismissed in its entirety without leave to reapply.

The landlord's copy of this decision is accompanied by an Order of Possession to take effect at 1 p.m. on January 31, 2013. The parties are reminded that, with the Notice to End Tenancy for landlord use pending, the tenant may end the tenancy with 10 days notice under section 50 of the *Act*.

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: January 08, 2013.

Residential Tenancy Branch

