



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

The tenant applies to cancel a Notice to End Tenancy given for Cause and recover the fee paid for this application.

Both parties attended the hearing and gave evidence under oath.

Issues(s) to be Decided

Does the landlord have cause to end this tenancy?

Background and Evidence

The landlord has issued a Notice to End Tenancy under Section 47 alleging

47 (1) (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,

And under Section 48 (2) alleging:

An employer may end the tenancy of an employee in respect of a rental unit rented or provided by the employer to the employee to occupy during the term of employment by giving notice to end the tenancy if the employment is ended.

The landlord stated that she did not intend to allege Section 48(2). As to the illegal activity the landlord testified that the acts were not actually "illegal" but the tenant complains all the time and he has changed the locks without the landlord's authority. The landlord also submits that the tenant has not signed the tenancy agreement even

though this tenancy began in February of 2011. The landlord submits that the tenant threatens to report the landlord to the City because the tenant is upset that water is not draining properly from the bathtub. The landlord says the plumber has been called twice about the tub and the tenant has been supplied with 8-10 bottles of Drano. The landlord says the stove and oven were damaged and replaced in November 2011. The landlord says that the tenant is drying pieces of carpet in the dryer and the dryer has turned blue inside. The landlord says the tenant's son came to play with the landlord's children and the landlords were asked to pay the tenant \$30.00 because the tenant alleges that the landlord's children broke the tenant's child's game. The landlord says the tenant's son comes to play without the landlord's permission and a hockey stick has been stolen. The tenant's son has come to the landlords several times seeking a key to the suite. The landlord says she has given the tenant written notice to vacate twice but the tenant has refused to vacate stating that he needs a legal notice from the Residential Tenancy Act.

Analysis

The onus or burden of proof is on the party making the claim. In this case the landlord has claimed she has cause to end this tenancy and the tenant does not agree. Now the landlord must prove he has cause to end this tenancy. I accept the testimony of the landlord as set out above and while some of the activities may be annoying, none are illegal. With respect to the locks, the tenant is reminded not to change the locks without the landlord's permission or without an Order of the Residential Tenancy Branch.

Overall, I find that the landlord has failed in his burden of proving she has cause to end this tenancy. The tenant's application is allowed. The Notice to End Tenancy is cancelled. The effect of this decision is that this tenancy shall continue beyond the effective date set out on the Notice to End Tenancy issued in this matter.

As it was necessary for the tenant to file an application seeking to dispute the notice for which the tenant incurred a cost of \$50.00 and that Notice has now been cancelled, I will allow the tenant to deduct \$50.00 from his next rental payment to realize recovery of that sum.

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: February 12, 2013

Residential Tenancy Branch

