



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP and LRE

Introduction

This hearing was convened on an application by the tenant to have set aside a Notice to End Tenancy for cause served on February 1, 2013, repairs to the rental unit and an order limiting the landlord's access to the rental unit.

Issue(s) to be Decided

Should the Notice to End Tenancy be upheld with an Order of Possession set aside?
Has the tenant proven that an order for repairs or an order limiting the landlord's access to the rental unit be restricted?

Background and Evidence

This tenancy began on July 18, 2012. Rent is \$700 per month and the landlord holds a security deposit of \$350 paid at the beginning of the tenancy.

While application was made by the tenant, because the primary issue in dispute is the notice to end tenancy, the landlord was asked to give reasons in support of the notice.

The landlord stated that the major reason for service of the notice arose as a result of three incidents in rental building involving police attendance.

The first occurred in December 2012 when the applicant tenant was away from the rental unit and a male tenant from upstairs ran amok threatening the other tenants in the rental building with a gun.

While the landlord concurs that the applicant tenant had no involvement in that incident, she was involved in a conflict with the same tenant on January 7, 2013 at 2 a.m. when police were again called and removed knives from the upstairs tenant's apartment.

The landlord said the male tenant had told him the female tenant had waited up for him until her returned home from work when she confronted him over money he owed her for shared internet service. The tenant stated that he had come to her window.

The landlord stated that the male tenant had been badly beaten shortly after that incident and he was concerned that the applicant tenant or a person acting on her behalf had been responsible which gave him concern for his own safety if he were to be drawn into conflict with the applicant tenant.

The applicant and the upstairs tenant were again the subject of police attendance on January 13, 2013 when they apparently argued again over the internet issues. The landlord said the applicant was taken into custody, but the tenant stated police had simply removed her from the situation for a couple of hours as she had been extremely upset by the conflict and they simply wanted to ensure her safety.

During that conflict, a door was damaged by someone swinging a chair. The landlord believed it was done by the applicant tenant, but the tenant and another resident who said he witnessed the event stated that the male tenant had swung the chair at the female, but had missed, hitting the door instead.

The landlord stated that the applicant had been a very good tenant except on odd occasions when she had too much to drink and was rude to him.

The landlord stated that there had been no problems with the subject tenancy from its beginnings in mid August of 2012 until the incidents of January 7 and January 13, 2013 and that there had been no further incidents between then and the present hearing two months later.

The tenant submitted letters of support from two other tenants, including the tenant who appeared at the hearing, attesting to the friendly and peaceful nature of the applicant.

The landlord stated that the notice to end the tenancy had also cited repeated late payment of rent, but the tenant contested two of three occasions claimed by the landlord. The landlord has submitted no documentary evidence in support of the claim and the tenant submitted an incomplete set of receipts.

The tenant's request for repairs apparently arose from slow running bathroom drains. The landlord stated that he had attempted to arrange a time to address the problem but the tenant was to be away at the time and asked him not to enter her unit when she was not at home.

Analysis

I find on the balance of probabilities that the two conflicts in which the applicant tenant were involved were escalated beyond reason, if not instigated, by the upstairs male tenant who has since left the rental building.

Based on the apparent positive tenancy of the applicant before and since the two incidents in question, I find reason to expect that the tenancy will continue peacefully until the tenant's planned departure in August 2013.

In the absence of documentary evidence by way of warning letters or notices to end tenancy for unpaid rent from the landlord, I must grant the benefit of doubt to the tenant on the question of repeated late payment of rent.

Therefore, I find that the Notice to End Tenancy of February 1, 2013 is set aside and the tenancy continues.

As to the tenant's request that the landlord's access to the rental unit be limited, I find that, under the circumstances, the tenant's interests are adequately protected by section 29 of the *Act* which requires the landlord to give 24-hours written notice before entering the rental unit.

I would remind the tenant that it is not a requirement that she be home at the time provided the landlord has given written notice. I am particularly concerned, given the potential damage of slow drains, that repairs should not be postponed until it is convenient for the tenant.

As to the landlord's concern that the tenant is capable of making unfounded accusations against him, he might wish to consider having a witness attend if his concern continues.

Conclusion

The Notice to End Tenancy of February 1, 2013 is set aside and the tenancy continues.

The remainder of the tenant's application is dismissed.

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: March 05, 2013

Residential Tenancy Branch

