



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPE, OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to an order of possession?

Background and Evidence

The parties involved are married to each other. The parties separated on August 1, 2011 and are in the process of getting divorced. The tenant has been residing at this location since they couple separated. There is neither a written tenancy agreement nor any monthly rent payable.

The landlord gave the following testimony:

The landlord stated that the agreement was that the tenant pays the property taxes in lieu of rent. On February 21, 2013 the landlord issued a One Month Notice to End Tenancy for Cause with an effective date of March 20, 2013. The notice was issued on the basis that the tenant; has put the landlords property at significant risk, the tenant has damaged the landlords property, the tenant has jeopardized the lawful right or interest of another occupant or the landlord, and that the tenant has caused extraordinary damage to the unit/site/or property/park. The landlord became aware that

the taxes were not being paid. The landlord stated that the tenant built an “illegal wall” in the middle of the living room to house her “gators” and that her son was basically cut off from the house. The landlord also stated the tenant conducted other repairs on the property without obtaining permits for the work. The landlord feels the tenant should be evicted immediately.

The tenant gave the following testimony:

The tenant stated that she adamantly disputes the claims made by the landlord. The tenant stated the only reason he has filed this matter was because she was awarded child support, and the following day was served with the one month notice. The tenant stated that she owns half of this house and has every right to live there and cannot be evicted. The tenant stated that she was the one who has been paying the back taxes and that she has maintained and upgraded the property. The tenant feels that this matter is best dealt with at the divorce proceedings in the Supreme Court.

Analysis

When a landlord issues a notice under Section 47 they bear the burden of providing cause for issuing that notice. The landlords’ main reason for issuing the notice was the “verbal agreement” the parties had that the tenant would pay the taxes. The tenant adamantly disputed the landlords’ allegations. The landlord applied for dispute resolution and sought an order of possession. The reason noted on the landlords’ application for ending the tenancy was: employment with the landlord has ended. The landlord did not provide sufficient supporting documentation of said agreement. In addition the landlord did not provide photos of the “damage” she was doing to the property or warning letters from local authorities in regards to “illegal structures”. The landlords testimony, documentation and application where at odds with one another creating more doubt than providing clarity. Based on the above I find that the One Month Notice to End Tenancy for Cause dated February 21, 2013 with an effective date of March 20, 2013 is of no effect or force. The Notice is set aside. The tenancy remains in effect.

Conclusion

The Notice is set aside. The landlords' 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: April 22, 2013

Residential Tenancy Branch

