



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concert Realty Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OPC MND FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for cause. The landlord applied for an order of possession pursuant to the notice to end tenancy for cause, as well as for a monetary order for repair costs. Both the tenant and an agent for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

On April 25, 2013 the landlord served the tenant with a notice to end tenancy for cause. The notice indicates that the reason for ending the tenancy was that the tenant has engaged in illegal activity that has damaged the landlord's property.

Landlord's Evidence

The landlord stated that on April 24, 2013, the landlord found writing on a wall in the hallway of the third floor of the rental building, across from the elevator. The note was written in permanent marker, covering several square feet of wall, and read as follows:

Put the fuckin water back on in [tenant's rental unit], it's been 6 days now, the walls are sealed back up. The plumbers must be super fuckin heroes, cause they can't move a few things I forgot under the vanity and dumped shit all over them. [The landlord] has deceived and lied to me, nobody cleans, covers or does a bloody thing but make a mess. finish up and fuck off I've had enough!!

The landlord stated that the tenant then called the landlord on that date and asked whether the landlord had seen the tenant's message. On the same day, the landlord arranged for the writing on the wall to be painted over. The landlord submitted an invoice for that work, on which the contractor indicated that numerous coats of sealer were required to cover the permanent writer marking, and which cost a total of \$141.75.

The landlord stated that before the tenant's message was removed, any tenants, their guests or their children could see the message. The landlord's view was that the language used in the message as well as the form of communication were offensive and inappropriate. Further, the tenant violated several terms of his tenancy agreement in carrying out this act. The landlord stated that the illegal activity the tenant engaged in was vandalism, and that act of vandalism caused damage to the landlord's property. The landlord seeks an order of possession and a monetary order for the cost of the repairs, in the amount of \$141.75.

Tenant's Response

The tenant stated that the message he wrote on the wall was wrong, and he apologized for doing it. The tenant was frustrated with the landlord because they had opened up his unit for repairs three times. The tenant had already filed an application for monetary compensation, and that dispute is scheduled to be heard in June 2013. The tenant stated that the message was covered up the next morning, and he wrote the message where plastering and painting were being done so it would not be hard to cover up the damage.

The tenant disputed the amount claimed by the landlord for covering up the message. The tenant believed that it could have been done for \$10 to \$20.

Analysis

I find that the notice to end tenancy is not valid. The landlord did not provide sufficient evidence to demonstrate that the one act of writing the message on the hallway wall was serious, significant illegal activity that caused severe damage to the rental property, such as for example having a marijuana grow-op that causes extensive property

damage. I do find that the tenant's action and language use was extremely inappropriate, and that it may have interfered with other occupants or the landlord; however, the damage was quickly addressed. If the tenant carries out one further such action, the landlord may have grounds to end the tenancy for another cause, such as significantly interfering with or unreasonably disturbing other occupants or the landlord, or breaching a material term of the tenancy agreement and not correcting the breach within a reasonable time after written notice to do so. In this case, however, I cancel the notice to end tenancy dated April 25, 2013.

I find that the landlord is entitled to their monetary claim in its entirety. The tenant did not provide sufficient evidence to establish that the repair work could have been done for a lower cost, and I accept the landlord's claim as reasonable.

As the landlord's claim was only partially successful, I find they are not entitled to recovery of the filing fee for the cost of their application.

As the tenant's application was successful, he is entitled to recovery of the filing fee for the cost of his application.

Conclusion

The notice to end tenancy for cause is cancelled, with the effect that the tenancy continues.

The landlord is entitled to \$141.75. The tenant is entitled to \$50. The landlord may retain the balance of \$91.75 from the tenant's security deposit in compensation of this amount.

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: May 23, 2013

Residential Tenancy Branch

