



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stroshin Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, RP, RPP, RR, O

Introduction

This is an application filed by the Tenant for an order cancelling a notice to end tenancy issued for cause, a monetary order request for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, an order for the Landlord to make repairs to the unit, site or property, an order for the return of personal property, an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. The Landlord stated during the hearing that he did not receive the Tenant's amended application and seeks the amended portion to be adjourned or dismissed with leave to reapply. The Tenant states that the amended application was served on the Tenant in person to the Landlord's caretaker at the rental building which included the Tenant's evidence package on May 15, 2013. The Landlord states that he has only received the Tenant's original application to cancel the notice to end tenancy issued for cause, the request for an order for the Landlord to comply with the Act, regulation or tenancy agreement and to make repairs to the unit, site or property. The Tenant has provided a statement by a witness, M.S. that states that this package was served on May 15, 2013. The Landlord has acknowledged receiving the Tenant's evidence package. I find that the Tenant properly filed the amended application and although the Landlord states that he did not receive it the Landlord was aware of the details of the Tenant's dispute as shown in the Tenant's evidence which was received. The Landlord has not provided any details of what if any evidence he would need to prepare and supply in response to the Tenant's Application. The hearing shall proceed on the Tenant's Amended Application. The Tenant requests to exclude the Landlord's evidence package because it was received late just prior to the hearing date. The Tenant has confirmed receipt of the Landlord's evidence package, but has not provided any details of what if any evidence he would need to prepare and supply in response to the Landlord's evidence. It is clear that although this material is prejudicial to the Tenant, I find that its value outweighs any prejudice. The Landlord's evidence is material to support the Landlord's notice to end tenancy issued for cause for which the Tenant has filed for dispute. The Tenant's request to exclude the Landlord's evidence is denied. I find that as both parties have

confirmed the receipt of the evidence packages of the other party, that both parties have been properly served.

During the hearing the Landlord orally requested that the Tenancy come to an end as per the notice to end tenancy and receive an order of possession.

Issue(s) to be Decided

Is the Tenant entitled to an order cancelling a notice to end tenancy issued for cause?

Is the Landlord entitled to an order of possession?

Is the Tenant entitled to a monetary order?

Is the Tenant entitled to an order for the Landlord to comply with the Act, regulation or tenancy agreement?

Is the Tenant entitled to an order for the Landlord to make repairs to the unit, site or property?

Is the Tenant entitled to an order for the Landlord to return the Tenant's personal property?

Is the Tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This Tenancy began on April 1, 2012 on a fixed term tenancy ending on March 31, 2013 and then thereafter on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,010.00 payable on the 1st of each month and a security deposit of \$400.00 was paid on March 15, 2012.

Neither party has submitted a copy of the notice to end tenancy issued for cause, but both parties have confirmed the following details. The notice is dated April 15, 2013, the stated effective date is May 31, 2013 and that there are 3 stated reasons for cause selected.

-Tenant or a person permitted on the property by the tenant has:

- 1) significantly interfered with or unreasonably disturbed another occupant or the landlord.
- 2) seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- 3) put the landlord's property at significant risk.

Both parties also agreed that the Landlord served the Tenant with the 1 month notice to end tenancy issued for cause dated April 15, 2013 on April 15, 2013 by posting it to the rental unit door.

The Landlord states that management has previously received both written and verbal complaints from neighbor tenants of annoying and abusive behaviour. The Landlord has provided a copy of a letter dated August 4, 2012 and a final warning letter dated December 20, 2012 from management that was sent to the Tenant. The Tenant has disputed these claims stating that the Landlord has been discriminating against him through actions and inactions due to his status as a student with a permanent disability. The Tenant states that the Landlord has continued in his unlawful behaviour and illegal actions against him by refusing to install a missing bedroom door that was missing from the first day of his tenancy since April 1, 2013. The Landlord has stated that he is unaware of any complaints filed by the Tenant regarding a missing door. Both parties have confirmed that a condition inspection report for the move-in was never completed. The Tenant states that the Landlord blames the Tenant for the other Tenants moving out. The Tenant states that the Landlord removed the Tenants personal property (a sewing kit, a box and \$20.00 in cash) from outside of the Tenant's front door. The Landlord states that the Tenant was warned to remove the "unsightly cardboard box from the hallway". The Landlord confirms that the warning the box was disposed of and that he was unaware of the contents. The Tenant states that the Landlord was discriminating against him because other neighbors have routinely left various items out in the common hallway. The Landlord disputes this stating that the Tenants photographs which depict this for units #203 and #207 and that they are removed by the Tenants shortly thereafter. The Landlord also states that one Tenant had obtained permission to place a umbrella stand in the hallway immediately in front of the rental unit door. The Landlord states that the photographs depicting multiple items is the caretaker's unit and that he is allowed to store items temporarily left by Tenants in front of his unit to dispose of them after. The Landlord has provided copies of letters of complaint from Tenants in units #202, #203 and #304. These written complaints date from August 1, 2012, January 4, 2013, March 4, 2013, March 12, 2013, March 19, 2013 and March 22, 2013. The Tenant disputes these letters stating that these Tenants were filing the complaints in retaliation against him. The Tenant stated that one of the Tenants in #304 is not known to him and has never met that person.

The Tenant seeks a monetary order for \$1,400.00 which consists of \$100.00 per month for his 14 month tenancy because of a missing bedroom door. The Tenant states that this is an approximation based upon the going rate of a one bedroom suite compared to a studio suite. The Tenant states that this is based upon his observations of a similar unit being rented in a building across from his rental building. The Tenant states that there are no studio units in his building. The Landlord disputes this stating that he is unaware of any complaints from the Tenant regarding a missing bedroom door and that he also disputes that the Tenant has failed to provide any evidence of what a market rate difference would be between a studio and a one bedroom suite. The Tenant has

provided copies of letters to the Landlord dated April 23, 2012, July 10, 2012, October 29, 2012 and January 9, 2013 which request the installation of a bedroom door that was missing.

Analysis

I accept the testimony of both parties that a 1 month notice to end tenancy issued for cause dated April 15, 2013 was served on the Tenant by posting it to the rental unit door with the above stated reasons for cause and as such find that the Tenant was properly served.

The Tenant has disputed the Landlord's reasons for cause stating that the neighbor tenants were filing these complaints in retaliation against him. The onus or burden of proof is on the party making the claim, in this case the Tenant is responsible as he has made an application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Landlord has provided letters of complaint from 3 different neighboring tenants. The Tenant has disputed these complaints citing retaliation on the part of these individuals. I find that the Tenant has failed to provide sufficient evidence to satisfy me that these letters or complaints are fraudulent. The Tenant has stated that he does not know the Tenant in #304 and has also failed to provide any supporting details that these letters of complaint were obtained fraudulently by the Landlord. On a balance of probabilities, I prefer the evidence of the Landlord over that of the Tenant. I find that the Landlord has established grounds for the 1 month notice to end tenancy issued for cause dated April 15, 2013 with an effective date of May 31, 2013. The Landlord is granted an order of possession effective on May 31, 2013.

As the Tenancy is coming to an end, I decline to make any orders regarding repairs to the rental unit, site or property. I also note that the Tenant has not provided any details of needed repairs and his only request was for an installation of a bedroom door. I also decline to make any orders regarding a reduction in rent.

As for the Tenant's request for the return of personal property, it is clear based upon the evidence of both parties that the Landlord is not in possession of the Tenant's property,

namely the sewing kit, box and a \$20.00 bill. In any event, I find that the Tenant has failed to establish a claim for this. The evidence provided by both parties show that the Tenant was warned to remove any personal items from the hallway in front of his rental door prior to the Landlord disposing of these items. I find that the Tenant has failed to establish a claim for this portion of the claim.

As for the Tenant's monetary claim of \$1,400.00, I find that the Tenant has failed to establish a claim. Although the Tenant has submitted copies of various dated letters to the Landlord requesting the installation of a missing door, the Landlord has disputed that no such requests were made. I note on all of the copies submitted by the Tenant that the address provided for the Landlord is a different address than that provided on the Tenant's Application as well as each letter appears to have an original signature. I also note that the Tenant has provided no documentary evidence to establish what the market rate difference between a studio and a 1 bedroom suite. On this basis, I find on a balance of probabilities that the Tenant failed to inform the Landlord of the missing bedroom door and has failed to establish a monetary claim. This portion of the Tenant's Application is dismissed.

The Tenant's Application is dismissed. The notice dated April 15, 2013 is upheld. The Landlord's oral request for an order of possession is granted. The Landlord is granted an order of possession effective on May 31, 2013.

Conclusion

The Landlord is granted an order of possession effective May 31, 2013.

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 27, 2013

Residential Tenancy Branch