



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Northern Property Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNC, MNDC, O

Introduction

This hearing dealt with an *amended* application by the tenant seeking compensation for lack of repairs by the landlord resulting in the tenant's loss of quiet enjoyment; and, to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated April 13, 2013, with an effective date of May 31, 2013.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to this claim and to make relevant prior submission of document evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary matters

The tenant provided proof they amended their application on April 16, 2013 to dispute a Notice to End and altering their monetary claim downward from \$653.00 to \$175.00. The tenant claims they sent their amended application to the landlord - as required by the Rules of Procedures and as the tenant was instructed. The landlord disputes that the tenant sent them the amended application – claiming that they indeed received a second package of evidence from the tenant on April 16, 2013, but that it contained a copy of the original application and absent of any amended portions to the application. The landlord confirmed the tracking number of their registered mail package of April 16, 2013. The tenant confirmed they sent the landlord an amended application. I apprised the parties that I would defer to my Decision in respect to allowing the amendment, but that I would hear evidence from the parties in respect to the matters giving rise to the Notice to End as if I was allowing the amendment along with other matters in dispute. It must be noted the tenant's monetary amendment does not unfairly prejudice the landlord.

At the outset the landlord requested an Order of Possession effective June 30, 2013 if I were to uphold the landlord's Notice. It must be noted that when a landlord gives a Notice to End for Cause the onus is on the landlord to be prepared to support their

reasons for issuing the Notice - to provide sufficient evidence that the Notice was validly issued and for the reasons as stated in the Notice to End.

Issue(s) to be Decided

Is the Notice to end tenancy valid and issued for sufficient reasons?

Is the landlord entitled to an Order of Possession?

Is the tenant entitled to the monetary amount claimed?

Background and Evidence

It is undisputed that this tenancy began 8 years ago. The parties do not dispute that the lock on the main entrance door became compromised on or about March 12, 2013. The tenant informed the landlord and the landlord soon-after made a repair to the lock, but that it again broke one week later. The landlord testified that due to costs and availability of parts, the door lock issue was not resolved for an additional 3 weeks on April 12, 2013. The landlord claims the tenant should not have been concerned as they have a lock on their unit door. The tenant claims they, in part, pay rent for use and access of the common residential property and that they rely on the main door to secure those portions of the residential property they may access – such as the lobby or the stairwells – from unauthorized intrusion onto the property. The tenant testified the lack of a secure main door removed from them a sense of security affecting the quiet enjoyment of their tenancy – for which they seek compensation.

A copy of the Notice to End for Cause was submitted with an accompanying letter from the landlord dated April 13, 2013 explaining in detail the reasons for the Notice to End. The Notice to end was issued for the following reasons;

Tenant has:

-significantly interfered with or unreasonably disturbed another occupant or the landlord.

-seriously jeopardized the health or safety or lawful right of another occupant or the landlord

Tenant has engaged in illegal activity that has, or is likely to:

-adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

The tenant officially disputes the Notice to End as they do not wish to vacate; however, in testimony they confirmed much of the landlord's reasons for wanting to end the tenancy.

The landlord testified that the tenant attempted to *fraudulently* obtain money from other tenants by *panhandling* within the residential property: seeking money from other tenants under the guise it was authorized by the landlord. The tenant explained they were only engaging other tenants to support their application for dispute resolution to have the main door fixed – by helping pay the \$50.00 filing fee they were informed was

required, *before* they actually filed their application and learned the fee could be waived. The tenant testified that in the absence of information they thought at the time that this was a fair solution as the main door lock issues affected all tenants.

The landlord further testified that during repairs to the main door the building fire alarm was inadvertently triggered by fumes from the work. The landlord testified the tenant refused to move from their position in an emergency stairwell during the alarm to allow tenants to exit the building as compelled by the alarm. The landlord claims they received complaints from other tenants that the applicant refused to move when asked to do so and told others to go back to their units as there was not fire. The tenant does not dispute they sat at the top of the stairs and occupied half the passageway, but that people could go by them. Their reason for their conduct was that they felt confident there was no fire in the building, and claims that as a result of their large physical size and their respiratory issues they could not quickly get up and out of the way. However, the tenant testified they ultimately left the building along with the other tenants. The landlord also claims the tenant was unfairly critical to others about the landlord and intrusive in the landlord's business, and intrusive in conduct with other tenants.

Analysis

I am allowing the tenant's amendment to dispute the Notice to End. I find the tenant amended their application with the *Residential Tenancy Branch* to dispute the Notice to end in this matter within the time allowed to do so. I find the landlord then received a second package of evidence from the tenant intended to inform them of the tenant's amended application. I accept the tenant genuinely intended to include the appropriate material in the second package, but may not have. None the less, having reflected on the evidence of the landlord for issuing the Notice to End and on the rebuttal evidence of the tenant, I find that even if the landlord had been afforded additional time and provided additional corroborating evidence to their assertions for issuing the Notice to End, that any additional submissions would not have added more validity or appreciably more evidentiary weight to their reasons for ending the tenancy. As a result, I find it is not prejudicial to the landlord's right to have known in greater advance of the tenant's aim to dispute their Notice. I am satisfied the tenant applied within the time allowed to dispute the Notice to End and the landlord was given opportunity in the hearing to defend their reasons for issuing the Notice. Effectively, I find the landlord has not been unfairly prejudiced.

Therefore, on preponderance of all the evidence before me, I am not satisfied that the landlord has proved its case. I accept that the tenant behaved inappropriately on the dates in question due to misguided intentions. While I accept that the tenant has been intrusive in their conduct I am not satisfied that the words or the inappropriate actions on the part of the tenant justify bringing this tenancy to an end. I note that this has been an 8 year tenancy and it appears from the evidence that the events of late were not an ongoing pattern of behaviour for this tenant. Clearly, if such behaviours were to occur again in the future and another Notice to End Tenancy issued, the record of these events can and would form part of the landlord's case should it again come before an

Arbitrator for consideration. Effectively, the tenant has come perilously close to losing their tenancy and they are cautioned to refrain from interfering with the lawful rights and safety of the other occupants of the residential property, or the landlord.

I Order the Notice to End dated April 13, 2012 **is cancelled**, or set aside. If necessary, the landlord is at liberty to issue a new *valid* Notice to End for *valid* reasons.

In respect to the tenant's application for compensation for a loss of quiet enjoyment. I accept the tenant's argument that the landlord permitted the main entrance to the residential property to remain insecure and therefore placing the security of all occupants at risk for an unreasonable amount of time and that this resulted in a breach of the applicant's right to quiet enjoyment. I make this finding only in respect to the applicant. As a result, I grant the tenant a set award of **\$100.00**, without leave to reapply.

Conclusion

The tenant's application to cancel a Notice to end for Cause is granted. The landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

I Order that the tenant may deduct **\$100.00** from a future rent.

This Decision is final and binding on both parties.

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 01, 2013

Residential Tenancy Branch