



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, MND, MNDC, OLC, LRE, FF

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlord and by the tenant. The landlord has applied for an order ending the tenancy early and to obtain an Order of Possession; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord's application was scheduled to be heard May 31, 2013 and the tenant's application was scheduled to be heard on May 7, 2013. The landlord had applied to have the 2 disputes joined to be heard together, but did not make that application in time and the request was initially denied. However, the parties appeared before me on May 7, 2013 and I ordered that the files be joined to be heard together on May 31, 2013 having determined that it would be beneficial for the parties and for the objectives of the *Residential Tenancy Act* to be met.

Both parties attended the conference call hearing on May 31, 2013 and provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the tenant withdrew the application for an order suspending or setting conditions on the landlord's right to enter the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Is the landlord entitled to end the tenancy early and obtain an Order of Possession?
- Has the landlord established a monetary claim as against the tenant for damage to the unit, site or property?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established a requirement for an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that this fixed term tenancy began on October 1, 2012 and expires on June 30, 2013. Rent in the amount of \$1,600.00 per month is currently payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. No move-in condition inspection report was completed.

The landlord further testified that on April 20, 2013 the tenant was served with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the rental unit on that date. A copy of the notice was provided for this hearing. It is dated April 20, 2013 and contains an expected date of vacancy of May 30, 2013. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - Put the landlord's property at significant risk;
- Tenant has not done required repairs of damage to the unit/site or property/park.

The landlord testified that the rental unit is managed by 2 co-executors, this landlord being one of the co-executors. During the course of the tenancy, the tenant would not permit an inspection by the landlord. On February 18, 2013 the other co-executor inspected the rental unit. The tenant was provided with a letter by the landlord on April 14, 2013 stating that the first co-executor had resigned as landlord and the second co-executor was taking over as landlord. A copy of the letter was provided for this hearing.

On April 18, 2013 the landlord gave the tenant a Notice of Inspection personally. The tenant stated that the tenant did not trust the landlord and did not want the landlord there. As a result, no inspection has been completed since February, and the landlord states that that has put the rental unit at significant risk.

The landlord also testified that the tenant has been smoking in the garage and the addendum to the tenancy agreement states, "No smoking is permitted inside any of the buildings situated on the property." A copy of the tenancy agreement was provided by the tenant for this hearing which is signed by the parties on October 3, 2012 and is accompanied by an addendum with only that one term. The landlord also provided an estimate for work required by a restoration company to restore the garage. The estimate is for cleaning and "Restoration/Service/Remodel" for a cost of \$1,059.56 as well as 10% "Overhead" and GST in the amount of \$58.28, for a total of \$1,223.80. The restoration company was asked to prepare a report for the cost of remediation, but the work has not yet been completed because the tenant still resides in the rental unit. The landlord claims that amount from the tenant.

With respect to ending the tenancy early, the landlord stated that the parties had agreed on May 7, 2013 that the tenant would vacate the rental unit on May 31, 2013, which is today, and the parties have arranged a move-out condition inspection.

The tenant testified that the move is taking place today and agrees that the parties had arranged a move-out condition inspection be completed today as well.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement now refers to the landlord complying with Section 38 as it relates to the security deposit.

The tenant also testified that when first moving in, all discussions were held between the tenant and the other co-executor, who was the acting landlord until sometime in April, 2013 when he resigned. That co-executor completed an inspection of the rental unit in February which shows that the rental unit is in excellent condition. The tenant agreed at that time to having the garage inspected as well.

On April 15, 2013 the landlord attended the rental unit and knocked on the door. The tenant wouldn't answer at first, but eventually did, and the landlord stated that the tenant was being served with a notice to inspect the rental unit.

On April 18, 2013 the landlord returned and again the tenant refused to allow the inspection. On April 20, 2013 the landlord attended again twice. On April 29, 2013 the landlord arrived with other relatives and the landlord's spouse had a video camera.

On May 1, 2013 the police attended and the landlord asked that assault charges be laid against the tenant's partner, but no criminal charges resulted.

Analysis

Firstly, with respect to the landlord's application for a monetary order for damage to the unit, site or property, I find that the application has been made prematurely. The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear, and states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit, and must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant, but is not required to make repairs for reasonable wear and tear. The parties agreed to a move-out condition inspection to take place on May 31, 2013, the day of this hearing, and if the tenant has not corrected any issues prior, the landlord will be at liberty to make an application for damages, and I dismiss the landlord's application for a monetary order for damage to the unit, site or property with leave to reapply.

I also dismiss the landlord's application for an order ending the tenancy early and to obtain an Order of Possession.

With respect to the tenant's application, the tenant testified that the portion of the application requesting an order that the landlord comply with the *Act*, regulation or tenancy agreement now refers to the return of the tenant's security deposit. I find that when the application was filed, that was not the intent of the tenant. I find that the intent of the tenant was for an order that the landlord not enter into the rental unit. I have no evidence before me to suggest that the landlord will not comply with the *Act* as it refers to the security deposit, and I dismiss this portion of the tenant's application. In the event that the landlord does not comply with Section 38 as it relates to the security deposit, the tenant will be at liberty to make an application for return of the deposit so long as the tenant has complied with Section 38.

With respect to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, the onus is on the tenant to satisfy the 4-part test for damages:

1. That the damage or loss exists;

2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate, or reduce such damage or loss.

The tenant's application claims \$4,500.00 and the details portion states on-going harassment by the landlord which has caused the tenant to have to move out. The landlord has served the tenant with a notice to inspect the rental unit which was denied by the tenant. There is nothing in the evidence before me to suggest that the landlord caused the tenant to have to move out. The tenant testified that the tenant does not trust the landlord and does not want the landlord in some rooms of the rental unit. The landlord, according to the *Act*, has a right to inspect the rental unit monthly. I fail to see how the landlord has failed to comply with the *Act* or the tenancy agreement. I further fail to see how the tenant has mitigated any loss. To mitigate would have been to allow the inspections and if the landlord continued to give notices to inspect beyond what the *Act* specifies, then the tenant may have a claim. In the circumstances, I find that the tenant has failed to satisfy the 4-part test for damages, and the tenant's application is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

The landlord's application for a monetary order for damage to the unit, site or property is hereby dismissed with leave to reapply.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

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: June 07, 2013

Residential Tenancy Branch