



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC; CNR; OLC; LRE; AAT

Introduction

This Hearing dealt with the Tenant's application filed July 29, 2013, for an Order that the Landlord comply with the Act, regulation or tenancy agreement; for an Order suspending or restricting the Landlord's right to enter the rental unit; and for an Order allowing access to the rental unit for the Tenant's guests. On August 6, 2013, the Tenant amended her application to include a request to cancel a *One Month Notice to End Tenancy for Cause* issued July 30, 2013 and a *10 day Notice to End Tenancy for Unpaid Rent and Utilities* issued August 3, 2013 (the Notices).

The parties gave affirmed testimony at the Hearing.

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that a friend of the Tenant's served the Landlord with the Notice of Hearing documents by hand delivering the documents to the Landlord on August 3, 2013, at 4:30 p.m. Another friend of the Tenant's served the Landlord with a copy of the Tenant's amended application and copies of her documentary evidence by hand delivering the documents to the Landlord on August 9, 2013 at 10:00 a.m.

It was also determined that the Landlord served the Tenant with her documentary evidence on August 9, 2013 at 10:00 a.m.

Issue to be Decided

- Should the Notices be cancelled?

- Should the Landlord be ordered to comply with the Act and provide receipts for rent paid in cash; allow the Tenant's guests access to the rental unit; and provide the Tenant with 24 hour written notice of intent to enter the rental unit?

Background and Evidence

The Landlord and her adult son live in the rental property on the lower floor. The Tenant and her two children live on the upper floor. The suites are approximately the same size.

There is no written tenancy agreement, however the Act defines a tenancy agreement as, "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy the rental unit".

The parties agreed that this tenancy started on January 18, 2012. Monthly rent is \$950.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$325.00 at the beginning of the tenancy. Rent is paid in cash. The Landlord does not provide receipts to the Tenant.

The Landlord stated that the security deposit has been applied towards unpaid rent. The Tenant stated that she doesn't owe any rent to the Landlord.

The Tenant is responsible for paying a share of the utilities, but the parties disagreed with respect to how much she should pay. The Landlord stated that the parties agreed that the Tenant would pay 50% of the hydro. The Tenant stated that she agreed to pay towards utilities, but there was never an agreement that she should pay half. The Tenant stated that the parties discussed payments towards hydro, but that she has never been provided with copies of the hydro bills. The Landlord agreed that she has not provided copies of the hydro bills to the Tenant.

On the Notice for Cause, the Landlord alleges that the Tenant is repeatedly late paying rent. She stated that the Tenant was late in October, 2012; May, 2013; June, 2013 and July, 2013. With respect to the Notice for Unpaid Rent, the Landlord alleges that the Tenant has not paid rent for August, 2013.

The Tenant stated that she always pays her rent in cash before the end of the month prior to the month that it is due. She stated that the Landlord keeps upping the amount she owes for utilities without providing proof of the cost of utilities. The Tenant stated that she was not late paying rent for May, June or July, 2013, and that she paid

\$1,200.00 for August rent and utilities in July, 2013. The Tenant provided copies of her bank statements in evidence.

The Tenant stated that the Landlord harasses the Tenant and her family by entering their home intoxicated on many occasions without notice and uninvited. She stated that the Landlord refuses to do repairs at the rental unit during business hours. The Tenant testified that on July 24, 2013, the Landlord stopped the Tenant's pet sitter from entering the rental unit and therefore the Tenant had to cancel vacation plans.

The Landlord stated that any time she enters the rental unit, it is with the Tenant's permission. She denied stopping the Tenant's pet sitter from entering the rental unit.

Analysis

When a landlord seeks to end a tenancy, the onus is on the landlord to prove on the balance of probabilities that the tenancy should end for the reasons indicated on the notice to end tenancy. In this case, I find that the Landlord has not provided sufficient evidence to support either of the Notices.

The Tenant denied being repeatedly late paying rent, or that she has not paid rent for August, 2013. Section 26(2) of the Act requires a landlord to provide receipts for rent paid in cash. The Landlord admittedly does not provide receipts for rent paid in cash. Therefore, I find that the Landlord has failed to provide sufficient evidence that the Tenant was late paying rent, or that she has not paid rent for August, 2013. I find that the Tenant provided a plausible explanation and documentary evidence to support her assertion that rent is paid in full and before it is due.

The Landlord did not provide copies of hydro bills to the Tenant when the bills came in, or to the Residential Tenancy Branch in evidence. Therefore, I find that the Landlord has failed to provide sufficient evidence that the Tenant owes any money for utilities. I also find that the Landlord has failed to provide sufficient evidence that the security deposit was applied towards outstanding rent.

For the reasons set out above, I find that the Notices are not valid notices to end the tenancy and they are canceled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

I find that no rent or utilities are owed to August 15, 2013. I further find that the Landlord continues to hold the Tenant's security deposit of \$350.00 and that it must be applied in accordance with the provisions of the Act.

I hereby Order that the Landlord comply with the Act and provide the Tenant with receipts for rent paid in cash. I Order that the Landlord provide the Tenant with copies of utility bills. The Landlord's home and the Tenant's home are approximately the same size and there are two adults living downstairs and one adult, two children living upstairs. Therefore I find that effective August 16, 2013, the Tenant's share of utilities is 50%.

The Tenant has testified that she will require the Landlord to provide 24 hour written notice of her intent to enter the rental unit. Therefore, **I order the Landlord to comply with Section 29(1) of the Act. I also caution the Landlord with respect to the provisions of Section 30(1) of the Act.**

An information sheet accompanies this Decision and includes a link to the Residential Tenancy Branch's website, where the parties can find the Residential Tenancy Act and Regulation as well as other guidelines and policies. I encourage the parties to acquaint themselves with the provisions of the legislation so that they are aware of their rights and responsibilities under the Act.

Conclusion

The Notice to End Tenancy issued July 8, 2013, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

I find that the Tenant owes no rent or utilities up to and including August 15, 2013. Effective August 16, 2013, the Tenant's share of the utilities is 50%. The Landlord must provide the Tenant with receipts for rent paid in cash. The Landlord must provide the Tenant with copies of the utility bills.

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: August 16, 2013

Residential Tenancy Branch