



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, LRE; MNDC; MNSD; OLC; RP; FF

Introduction

This Hearing dealt with the Tenants' application to cancel a notice to end the tenancy; for compensation for damage or loss under the Act, regulation or tenancy agreement; for return of the security deposit; for an order that the Landlord comply with the Act, regulation or tenancy agreement; an order that the Landlord make repairs to the rental unit, for an order setting conditions on or suspending the Landlord's right to enter the rental unit; and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the Tenant hand delivered the Notice of Hearing documents to the Landlord at his residence on November 9, 2013.

Preliminary Matters

The Tenant had provided two notices to end tenancy in evidence. At the outset of the Hearing, the Tenant clarified that she was not seeking to cancel the Notice to End Tenancy for Landlord's Use that was issued on November 14, 2013. She stated that the Tenants are seeking to cancel the hand written notice to end the tenancy that the Landlord had provided to the Tenants on November 3, 2013. The Tenant stated that the Tenants have accepted the November 14, 2013, Notice and will be moving out of the rental unit on January 31, 2014. She also stated that they will be taking their compensation under Section 51 of the Act by not paying rent for the month of January, 2013.

The Tenant also asked to withdraw the Tenants' application for compensation for damage or loss. She stated that the Tenants had decided to pursue a claim for

personal injury in Court. I allowed the Tenant's application to withdraw that portion of their claim.

I explained to the Tenant that the security deposit would be dealt with in accordance with the provisions of the Act, at the end of the tenancy. Therefore this portion of the Tenants' application is dismissed with leave to reapply.

The Tenants' Application for Dispute Resolution indicates that they are seeking an order that the Landlord comply with the Act, regulation or tenancy agreement; however, they did not provide sufficient details in their Application with respect to what section of the Act, regulation or tenancy agreement they sought the Landlord to comply with. Therefore this portion of the Tenant's application is dismissed.

The Hearing continued with respect to the remainder of the Tenants' application.

Issue to be Decided

- Should the hand written notice to end tenancy issued November 3, 2013, be cancelled?
- Should the Landlord's right to access the rental unit be suspended or limited?
- Should the Landlord be ordered to make repairs to the rental unit?

Background and Evidence

The rental unit is a suite in the Landlord's residence. This tenancy began on September 28, 2013. Monthly rent is \$675.00, due on the 1st day of each month. The Tenants paid a security deposit in the amount of \$325.00 on September 24, 2013.

The Tenant stated that the Landlord has been entering the rental unit without the Tenants' knowledge or consent.

The Tenant testified that one of the glass shower doors shattered about a week after the tenancy began. She stated that her husband got into the shower and closed the door. The Tenant testified that the door shattered and that her husband was cut all over his body. She stated that there was blood all over the place and that he had to go to hospital. The Tenant testified that they took a close look at the shower rail afterwards and discovered that a screw had been placed diagonally, hitting the door and causing it to shatter. The Tenants seek an order that the Landlord replace the shower doors. The Tenant testified that she has put up a temporary shower curtain so that the Tenants can have their daily showers.

The Landlord denied entering the rental unit without the Tenants' knowledge and consent. He stated that he delivers their mail to them when he sees that their car is in the driveway, and that he always knocks on the door. The Landlord stated that the male Tenant generally lets him know when a convenient time is to collect the rent. The Landlord said that he is aware of the provisions of the Act regarding notice to enter a rental unit.

The Landlord stated that the rental unit is new. He stated that his family members lived in it first, for about two months, and that another tenant was there for approximately 7 months before the Tenants. He submitted that there was nothing wrong with the shower door and that the Tenants must have been rough with it. The Landlord stated that the shower was inspected by the City just after it was installed and that the inspection passed. The Landlord stated that the screw did not come into contact with the glass. The Landlord said that he intends to replace the shower door, but that he does not know when he can get a workman in to install a new door.

Analysis

I find that the Landlord's notice to end the tenancy issued on November 3, 2013, is not a valid notice. Section 52 of the Act requires a landlord's notice to end a tenancy to be in the approved form. I find that the notice issued November 3, 2013, is not in the approved form. This portion of the Tenants' application is granted. It is important to note that the Tenants are not disputing the Two Month Notice to End Tenancy for Landlords Use that was issued on November 14, 2013.

The Landlord denies entering the rental unit without the Tenants' permission and I find that the Tenants did not provide sufficient evidence to prove that the Landlord has done so. Therefore, I decline to suspend the Landlord's right to access the rental unit, and find that the Act already places sufficient conditions on a Landlords' right of access. In particular, Section 29 of the Act states:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I order that the Landlord replace the shower door within a reasonable amount of time, depending on the availability of tradesmen. The Landlord must provide the Tenants with 24 hour Notice as set out above, unless the Tenants give their permission without such notice.

The Landlord issued and served the proper form of Notice to End the Tenancy one week after the Tenants' filed their Application. The Tenants have been partially successful in their application and I find that they are entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Conclusion

The Notice to End Tenancy issued June 29, 2013 is cancelled and the tenancy remains in full force and effect.

The parties were reminded of the provisions of Section 29 of the Act with respect to restrictions on the Landlord's right to access the rental unit.

I Order that the Landlord replace the shower door within a reasonable amount of time, depending on the availability of tradesmen.

The Tenants are hereby provided with a Monetary Order for service upon the Landlord in the amount of \$50.00, representing recovery of the filing fee. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: December 19, 2013

Residential Tenancy Branch

