



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant to cancel a Notice to End Tenancy for Cause and a monetary order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement and for filing fees.

The landlord and tenant both participated in the hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?
Is the tenant entitled to a monetary order?

Background and Evidence

The parties entered into a tenancy agreement effective September 15, 2013 whereby the tenant is obligated to pay \$1,700.00 in rent in advance on the first day of the month. The tenancy is a fixed term until September 15, 2014.

The landlord gave evidence that she spoke to her insurance company by telephone in September 2013 and they advised she should inspect the rental unit on a monthly basis at least until such time as the landlord had confidence in the tenant.

The landlord gave evidence that she gave notice to the tenant by email that she would be coming to the rental unit on October 23, 2013 to pick up some of her belongings and to inspect the rental unit. The tenant agrees that the landlord came to the rental unit to pick up some belongings but says the date was October 24, 2013.

The landlord gave evidence that she gave notice to the tenant that she would be coming to the rental unit again on November 1, 2013 to pick up more belongings and to complete a move-in Condition Inspection Report. The tenant agrees the landlord came to the rental unit on November 1, 2013 and they completed a move-in inspection report.

The landlord gave evidence that she gave notice to the tenant by email on December 3, 2013 that she would be coming to the rental unit on December 8, 2013 to do an inspection. The tenant replied by email that the time was not convenient to her. The landlord arrived on December 8, 2013 and the tenant did not permit her to enter the rental unit.

The landlord gave evidence that on December 8, 2013 she posted a Notice to End Tenancy for Cause (the "Notice") on the tenant's door, on the bases that the tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Section 90 of the Act provides that because the Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Notice three days later on December 11, 2013. The effective date specified on the Notice is January 31, 2014.

The tenant gave evidence that she did not feel comfortable having the landlord enter the rental unit, based on the landlord's behaviour on her two previous visits. The tenant said that on October 24 and November 1, 2013, the landlord displayed anger toward her. She said the landlord mistakenly thought the tenant's exercise weights belonged to the landlord and the landlord falsely accused the tenant of using the landlord's paint to paint the trim on a mirror. The tenant stated that she did not permit the landlord entry to the rental unit on December 8, 2013 because of the tenant's concerns regarding their previous interactions. The tenant sent a letter to the landlord on December 8, 2013 proposing that the landlord's inspections be limited to every four months. The landlord did not agree to this proposal.

The parties provided copies of a lengthy email exchange between them, where they disagreed about various matters including the use of storage space connected to the rental unit, the landlord's belongings in the rental unit, the frequency of the landlord's inspections, and whether the tenant could install curtain rods.

The landlord gave evidence that when she visited the property on December 8, 2013, she observed there were window coverings on all the windows and all the drapes were closed.

The landlord gave evidence that she again gave notice to the tenant by email on January 1, 2014 that she would be coming to the rental unit on January 5, 2014 to do an inspection. The tenant advised the landlord by email on January 2, 2014 that she would not permit the landlord to enter the rental unit on January 5, 2014. The tenant gave

evidence that she believed the landlord did not have a lawful right to enter the rental unit because the parties had an upcoming dispute resolution hearing scheduled for January 20, 2014.

The landlord gave evidence that she went to the property on January 5, 2014 but could not gain entry. No one answered the door and her key would not work in the lock. She concluded that the tenant had changed the locks. The tenant gave evidence that she did not change the locks.

The parties agreed during the hearing that the landlord will have access to the rental unit to conduct an inspection on January 25, 2014 from 11:00 to 11:30 a.m.

Analysis

Where a landlord seeks to end a tenancy for cause, the landlord has the burden of proof to show cause for ending the tenancy. In this case, I find that the landlord has not met that burden. The email exchange between the parties indicates an increasing amount of discord between the parties. However, the issues raised in evidence in the parties' email exchange and in their affirmed evidence are not sufficiently grave to provide cause for ending the tenancy.

I find that the tenant wrongly denied access to the landlord on December 8, 2013 after the landlord provided proper notice that she wished to enter the rental unit to conduct an inspection. However, I find that a single incident of refusing proper entry to the rental unit is not sufficient to have significantly interfered with the landlord or seriously jeopardized the lawful right of the landlord. I therefore order that the Notice to End Tenancy for Cause be cancelled.

I note that I cannot consider in this hearing any acts by the tenant that occurred after the Notice was served on December 8, 2013. The landlord has given evidence that the tenant again refused her entry to the rental unit after proper notice was given in early January. This may be sufficient grounds to support a further Notice to End Tenancy for Cause.

Where a tenant applies for damages or compensation for damage or loss under the Act, Regulation or tenancy agreement, the tenant must show a breach of one or more of the Act, Regulation, or tenancy agreement, and a resulting loss. In this case, the tenant claims that her right to quiet enjoyment of the rental unit, pursuant to Section 28 of the Act, was breached by the landlord's visits to the rental unit and requests for further

inspections. She further claims that she lost business income because she was unable to work due to stress occasioned by the landlord's actions.

I find the landlord's actions do not constitute a breach of the tenant's right to peaceful enjoyment. While the parties had some disagreements during the landlord's visits and by email, these were minor enough and infrequent enough to not interfere with the tenant's Section 28 rights. Further, I find that the landlord's requests for monthly inspections were reasonable given the insurance company's advice and the fact that the tenancy was in its early stages. The landlord's requests for monthly inspections did not interfere with the tenant's Section 28 rights. The tenant's application for a monetary order is therefore dismissed. I find that since the tenant has been partially successful in her application, she is entitled to 50% of her filing fees and may deduct \$25.00 from her rent.

Conclusion

The tenant's application is granted in part and the Notice to End Tenancy for Cause is cancelled. The tenant's application for a monetary order is dismissed. The tenant may deduct \$25.00 from her rent to recover half her RTB filing fee.

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: January 21, 2014

Residential Tenancy Branch