



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPC, CNC, CNL MNDC, RP, PSF, RR, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to notices to end tenancy for landlord's use of property and for cause. The tenant applied to cancel the notices to end tenancy and for an order directing the landlord to carry out repairs, reduce rent, provide services and compensate the tenant for expenses incurred from the loss of services. Both parties applied for the recovery of the filing fee.

Both parties gave affirmed testimony and 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. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

At the start of the hearing, the landlord informed me that he had withdrawn his notice to end tenancy for cause.

Issues to be decided

Has the landlord validly issued the notice to end tenancy for landlord's use of property and does the landlord or a close family member of the landlord intend, in good faith, to occupy the rental unit? Is the tenant entitled to her monetary claim? Did the landlord remove services that were included in the rent?

Background and Evidence

The rental unit is located on the main floor of the house. The current landlord purchased the home on May 24, 2014. The landlord stated that he was not provided with any documents related to the tenancy agreement, from the previous owner TH. TH testified in a written submission and in person during the conference call. He stated that there was no written tenancy agreement between him and the tenants. The agreement was verbal and he stated that any agreement signed by him that the tenant has filed into evidence is fraudulent. The agreement filed into evidence by the tenant contains TH's signature. TH stated that the tenant had sent him a shelter form to be filled out and that is the only document he signed. TH believed that the tenant has used this signature to create a fixed term tenancy agreement.

TH also testified about the terms of the verbal agreement. He stated that the cost of utilities, phone, internet and cable were included in the rent. He further stated that the garage was not part of the tenancy as he used it for the purpose of storing two of his vehicles. He allowed the tenant to keep a few boxes. TH stated that he owned indoor and outdoor plants and just left them there for the new owner when he sold the house.

On May 24, 2014, the landlord visited the tenant and was presented with a tenancy agreement. The landlord contacted the realtor who facilitated the sale of the home and found out that there was no signed tenancy agreement between the tenant and the former owner. This was confirmed in an email from TH dated May 29, 2014.

The tenant's position is that the tenancy agreement is a one year term which will end on September 30, 2014. However the tenancy agreement states that the tenancy will end on September 30, 2013. The tenant stated that this was a typo.

The current landlord stated that he intended to move into the house and use the basement for his home business as a personal trainer. The landlord applied for an amendment to his business licence and on May 29, 2014 the local municipal office approved the change and amended the location of his business as stated on the business licence, to the address of the rental unit. The landlord filed a copy of his business licence to support his testimony.

On June 01, 2014, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant has assigned or sublet the rental unit without the landlord's consent and that the tenant knowingly gave false information to the purchaser. The landlord stated that he served this notice in error as he regarded the tenancy agreement that the tenant presented, as false information.

On June 29, 2014, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property, with an effective date of August 31, 2014. The reasons for the notice are that the rental unit will be occupied by the landlord or the landlord's close family member.

In support of the notice to end tenancy, the landlord testified in his written submission that he, his wife and their child currently live in the home of his parents and wish to move out on their own and run their home business out of the basement of their home. The landlord also stated that he has started landscaping the property which supports his intentions to use the property for his own use.

The tenant argued that the landlord initially had no intention of ending the tenancy and it was only after a verbal altercation that the landlord served the notice to tenancy. The tenant also stated that when the landlord realized that the one month notice was invalid, he served the two month notice on the tenants.

The tenant stated that at the end of June the washing machine broke down. The landlord opened the machine and found that paper towel was preventing the machine from functioning. The machine was not repaired as of the date of this hearing and the tenant is claiming \$400.00 for the cost of doing laundry and \$180.00 for the cost of transporting her laundry to and from the Laundromat, for approximately one month.

The tenant is claiming \$220.04 for the cost of cable, phone and internet as this was included in the rent. The tenant agreed that she had not paid utilities yet.

The tenant stated that there was a potted maple tree on her patio which went missing. Later the tenant found that the tree was moved down stairs and is claiming \$100.00 for the cost of replacing the tree. The former owner TH, stated that the tree belonged to him and that he had left it at the house for the new owner.

The tenant stated that when the laundry machine broke down, the mattress pad for her daughter's bed was wet and could not be used. The tenant used puppy pads which did not protect the mattress from bedwetting. The tenant is claiming \$299.97 to replace the mattress.

The tenant also stated that a cat entered the house and defecated on her queen mattress. She is claiming \$319.97 to replace this mattress.

The tenant stated that when the new landlord purchased the house, he took over the garage and she was forced to put her belongings into storage. The tenant is claiming \$366.45 for the cost of storage.

The tenant stated that she has a condition that requires her to use the hot tub. The landlord restricted her from using the hot tub and stated that he would be turning it off. During the hearing, the landlord stated that he had intentions of moving the hot tub, but had not yet done so and the tenant had full use of the hot tub. The tenant filed a doctor's note regarding her medical condition and is claiming \$117.00 for the cost of a gym pass for the family, to allow her the use of a hot tub.

The tenant has claimed the following:

| | | |
|----|------------------------------|-------------------|
| 1. | Utilities | \$220.04 |
| 2. | Laundry | \$400.00 |
| 3. | Transportation to Laundromat | \$180.00 |
| 4. | Maple tree | \$100.00 |
| 5. | Twin mattress | \$299.97 |
| 6. | Queen mattress | \$319.97 |
| 7. | Public Storage | \$366.45 |
| 8. | Gym pass | \$117.00 |
| | Total | \$2,003.43 |

Analysis

Landlord's Application:

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. The landlord stated that he wished to move out of his parent's home where he currently resides with his family, live in the upper level of the rental

unit and run his business out of the lower level. The landlord has already started making changes to the lower level and the yard to suit his needs.

The tenant testified that according to the rental agreement, the parties were in a fixed term that would end in September 30, 2014 and therefore the landlord could not end the tenancy prior to that date.

Based on the testimony of the former landlord and the inaccurate dates on the agreement filed by the tenant, I find that I prefer the testimony of the former landlord. I further find that on a balance of probabilities it is more likely than not that there was no written tenancy agreement between the former landlord and the tenants and that the agreement filed into evidence by the tenant was not signed by the former landlord. Therefore, based on above, I find that the tenancy agreement was a verbal one and the tenancy was not a fixed term tenancy.

In the absence of any evidence to support the tenant's allegation that the landlord did not act in good faith when he served the notice to end tenancy; I find the landlord has met the good faith requirement of the legislation and intends to move into the rental unit. Therefore I uphold the notice to end tenancy.

Pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00 on August 31, 2014. This Order may be filed in the Supreme Court for enforcement.

The landlord has proven his case and is therefore entitled to the recovery of the filing fee.

Tenant's application:

As per the testimony of the former landlord TH, I find that the landlord is responsible for the cost of utilities and therefore must pay all utility bills. The tenant agreed that she has not paid any utilities that she has claimed and therefore her application for \$220.04 is dismissed.

The laundry machine broke down at the end of June and as of the date of the hearing had not been repaired or replaced. Since the cost of laundry is included in the rent, I find that the landlord must compensate the tenant for the cost of doing her laundry at a Laundromat. The landlord must also have the machine repaired immediately.

However, I find that the tenant's claim is excessive and based on the laundry needs for four people for approximately one month; I find it reasonable to award the tenant \$200.00 towards her claim.

The former landlord confirmed that the maple tree that the tenant is claiming for belonged to him and was left behind after the sale of the property for the new owner. Therefore the tenant's claim for \$100.00 for the tree is dismissed.

Based on the testimony of the tenant, I find that the tenant's mattresses were ruined by activities that were beyond the control of the landlord. Therefore I find that the landlord is not responsible for the cost of replacing the tenant's mattresses.

Based on the testimony of the former landlord, I find that the use of the garage was not included in the rent and therefore the tenant must bear the cost of storing her own possessions.

The landlord testified that the tenant still had full use of the hot tub and therefore I find that the tenant is not entitled to the cost of a gym pass.

Since the tenant has proven a portion of her claim, I award her the recovery of the filing fee of \$50.00.

Overall the landlord has established a monetary claim of \$50.00 (for the filing fee) and the tenant has established a claim of \$250.00 (\$200.00 for laundry and \$50.00 for the filing fee).

I will use the offsetting provisions of section 72 of the *Act* to establish the tenant's entitlement of \$200.00 which represents the difference between the established claims of both parties. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$200.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion and Order

I grant the landlord an order of possession effective on or before 1:00 on August 31, 2014.

I grant the tenant a monetary order in the amount of \$200.00. .

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 01, 2014

Residential Tenancy Branch

