



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, O, OPC, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on October 12, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was personally served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated October 12, 2014?
- b. Whether the tenant is entitled to an order that the landlord change the locks?
- c. Whether the tenant is entitled to an order restoring off street parking?
- d. Whether the tenant is entitled to an order to recover the cost of the filing fee?
- e. Whether the landlord is entitled to an Order for Possession?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a six month fixed term written tenancy agreement that provided that the tenancy would start on October 1, 2014, end on March 31, 2015 and the tenants would have to vacate at that time. The rent is \$1000 per month payable in advance on the first day of each month. No security deposit has been paid.

The Residential Tenancy Act encourages the parties to work out their differences through negotiations so that the arbitration process is not brought into play.

Unfortunately the parties were not able to reach a reasonable solution. Briefly the relevant facts are as follows:

- On October 1, 2014 the tenant began the process of moving in his belongings. The landlord was not available when he started to move in. He determined the front door lock was defective and he changed it so that he could complete the move in process without being concerned about his safety. The deadbolt remained the same.
- The male landlord visited the tenant later in the day to deal with concerns of the tenant. During that conversation the tenant expressed concern about the condition of the locks and indicated that he had changed the bottom lock (not the deadbolt). The landlord testified stated he was not happy with this. However, the tenant and male landlord agreed as follows:
 - The changed lock could remain.
 - The tenant would change the lock back to the original lock when he left.
 - The landlord could gain access to the tenant's rental unit through an inside door which was locked on the landlord's side if the landlord had to deal with an emergency. The tenant completed his move in.
- The male landlord testified he did not concern himself with this issue until approximately 1 ½ weeks later when he mentioned it to his wife. The female landlord objected to this situation and demanded the tenant change the lock back to the original lock.. The conversations between the female landlord and the tenant became uncivil.

- On October 10, 2014 the female landlord gave the tenant a note that stated “You did not have our permission to change the lock to the entrance of the basement suite you and L are renting from us. Please give us 2 copies of the key to the new lock or change the lock back to its original state by the end of tomorrow, October 11, 2014.
- The tenant testified on three occasions he attempted to work out a solution with the landlord but discussions reached an impasse. He testified he is prepared to give the landlord a key to the new lock that he installed. However, he was satisfied with the agreement he had reached with the male landlord whereby the landlords could gain access through the inside door if an emergency exist.
- The tenant testified the Craigslist advertisement indicated there was to be off street parking. The tenancy agreement provides that parking for 1 vehicle is included in the tenancy agreement. The landlord initially told him he could park in a certain area of the driveway. The landlord now objects and has told him he must park on the street.

Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(h) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 25 and 31 of the Residential Tenancy Act provide as follows:

Rekeying locks for new tenants

- 25** (1) At the request of a tenant at the start of a new tenancy, the landlord must
- (a) rekey or otherwise alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit, and
 - (b) pay all costs associated with the changes under paragraph (a).
- (2) If the landlord already complied with subsection (1) (a) and (b) at the end of the previous tenancy, the landlord need not do so again.

Prohibitions on changes to locks and other access

- 31** (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.
- (1.1) A landlord must not change locks or other means of access to a rental unit unless
 - (a) the tenant agrees to the change, and
 - (b) the landlord provides the tenant with new keys or other means of access to the rental unit.
 - (2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.
 - (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered the change.

Tenant's Application to Cancel the one month Notice to End Tenancy:

Section 25 of the Residential Tenancy Act imposes an obligation on the landlord to rekey or change the locks and pay all costs associated with the changes at the request of the tenant. The landlord is required to do this even if the landlord feels that it is not necessary. I determined that the tenant changed the locks on October 1, 2014 as a temporary solution as the landlord was not home in order for him to get the landlord's permission. The tenant advised the landlord of the change later that day when the parties dealt with outstanding issues.

At that time the male landlord had the legal right under section 31 to demand the tenant change the lock back to the original lock. The tenant had a legal right to demand that the landlord change the locks under section 25. Rather than rely on strict legal rights the tenant and male landlord work out a agreement that provided that the tenant could retain the lock as changed, the landlord could gain access through the inside door and the tenant would change the lock back when he leaves the rental unit. I see no reason why that reasonable agreement should not be enforced. In my view the landlord is estopped from now relying on the requirement of written consent as provided under section 31. Similarly, I determined the tenant's right to require the changing of both locks under section 25 has merged with this agreement.

In summary I determined there is no basis to order the tenant to re-install the previous lock at this time. He is obliged to do that when he leaves unless the parties agree otherwise. I determined that it was appropriate to order that the tenant provide the landlord with one key to the lock he has installed. I determined it was not appropriate to order that the landlord install a new lock including the deadbolt nor reimburse the tenant for the cost of the deadbolt he has purchased as that was not part of the original agreement.

I determined the landlord failed to establish the tenant has breached a material term of the tenancy agreement given the agreement between the tenant and male landlord. Further, the requirement that the tenant change the locks back within 24 hours is not a reasonable time given the landlord had access through the internal door if an emergency existed.

As a result I ordered that the Notice to End Tenancy dated October 12, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's Application to re-gain the parking stall:

I determined the tenant is entitled to an order that the landlord provide his off street parking stall. The advertisement provided there was off street parking. The tenancy agreement stated there was one parking stall provided with the rent. The landlord originally told him to park in the area. The landlord did not have a legal right to take the parking spot away and has not right to threaten him that his car would be towed.

As the tenant has been successful for the most part with this application I ordered the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be applied against future rent.

It is further Ordered that this sum be paid forthwith. The tenant is given a formal Order in the above terms and the landlord must be served with a copy of this Order as soon as possible.

Landlord's Application - Order of Possession:

For the reasons set out above I have ordered that the one month Notice to End Tenancy be cancelled. **Accordingly, I dismissed the landlord's application without leave to re-apply.**

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: November 26, 2014

Residential Tenancy Branch

