



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC, RP, LRE, 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 and for the recovery of the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to make repairs and reduce rent. The tenant also applied to suspend the landlord's right to enter the rental unit.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the tenant entitled to the remedies she has applied for?

Background and Evidence

The tenancy started on December 01, 2013. Both parties agreed that the rent is \$2,500.00 due on the first day of each month and that the tenant paid a security deposit of \$1,250.00.

The landlord also agreed that he allowed the tenant to pay rent for the first month of December 2013, on a date after the due date. The landlord stated that since then, the tenant has been late most of the time. The tenant agreed that she paid rent late for the months of April, May and June 2014 but stated that she had the landlord's permission to do so. The landlord stated that the tenant would pay partial rent on the due date and inform him that she would pay the balance at a later date and that he was left with no choice other than to agree.

The landlord stated that except for five months during this year long tenancy, the tenant did not pay full rent on the first of each month. On November 18, 2014, the landlord served the tenant with a notice to end tenancy for cause. The reason for the notice was that the tenant was repeatedly late paying rent.

The tenant argued that since October 2014, she has paid full rent on the first of the month and that the real reason for the notice was that the landlord has listed the home for sale. The tenant further added that she allowed the realtor to show the unit by appointment. The tenant agreed that the landlord gave her adequate notice to enter but on one occasion showed up 15 minutes earlier than the time of entry as stated on the notice. The tenant has applied for a suspension of the landlord's right to enter the rental unit.

The tenant also stated that the clothes rod in a closet was broken and despite repeated verbal reminders, the landlord did not fix it. The landlord agreed that the tenant informed him verbally of the broken closet rod but he stated that that she also told him that it was not a big deal. The tenant is claiming a rent reduction for the loss of use of the closet rod.

Analysis

In order to support the notice to end tenancy, the landlord must prove that the reason for the notice to end tenancy applies. During the hearing the tenant agreed that she did not pay full rent on the due date, on at least three occasions. Based on the testimony of both parties, I find that the tenant was repeatedly late paying rent.

Pursuant to section 38 of the *Residential Tenancy Policy Guideline*, three late payments are the minimum number sufficient to justify a notice under these provisions. Therefore, I find that the landlord has proven the reason for serving the tenant with a notice to end the tenancy for cause and accordingly, I uphold the notice to end tenancy.

Pursuant to section 55(2) I am issuing a formal order of possession effective on or before 1:00pm on January 31, 2015. The Order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his claim, I award him the recovery of the filing fee. The landlord may retain \$50.00 from the security deposit.

Since the tenancy is coming to an end the tenant's application for repairs and a rent reduction is moot and accordingly dismissed.

Regarding the landlord's right to enter the rental unit, Section 29 of the *Residential Tenancy Act* states that 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.

Pursuant to Section 29, I order the landlord to provide at least 24 hours' notice of entry to the tenant in writing, prior to entering the rental unit.

Conclusion

- I grant the landlord an order of possession effective on or before 1:00pm on January 31, 2015.
- The landlord may retain \$50.00 from the security deposit
- I order the landlord to comply with Section 29 with regard to entering the rental unit.
- The tenant's application is dismissed

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 30, 2014

Residential Tenancy Branch

