



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LRE, LAT, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order permitting the tenant to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. Each party provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. However, the tenant had not received the landlord's evidence prior to the hearing. The landlord stated that the tenant was served with the evidentiary material by registered mail on May 4, 2015 but has not yet picked it up. The Rules of Procedure require that a respondent's evidence must be received 7 days prior to the hearing, and the *Residential Tenancy Act* states that documents served by registered mail are deemed to have been served 5 days after mailing. In the circumstances, I am not satisfied that the tenant has received the landlord's evidentiary material 7 days prior to the hearing, and that evidence is not considered in this Decision. All other evidence, and the testimony of the parties are considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised. During the course of the landlord's testimony, the tenant's phone disconnected from the conference call. The tenant was absent for approximately 3 minutes, during which time no testimony was heard.

Issue(s) to be Decided

- Has the landlord established that the notice to end tenancy was given in accordance with the *Residential Tenancy Act*?

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damaged belongings and the cost of changing a lock?
- Has the tenant established that conditions should be imposed or the landlord's right to enter the rental unit should be suspended?
- Has the tenant established that the tenant should be permitted to change the lock to the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began a couple of days after mid-November, 2014 and the tenant still resides in the rental unit. A written tenancy agreement was signed by the parties however it's been changed a few times. Currently, rent in the amount of \$400.00 is payable on the 1st and 15th days of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The tenant further testified that the landlord had left some furniture in the rental unit and intended to retrieve it, and the tenant's furniture was stored in another room. The landlord sent the tenant a text message on or about March 4, 2015 saying that the landlord intended to inspect the rental unit the next day. Then the landlord changed the date to the following day in another text message, and then showed up early at 9:00 in the morning. The landlord told the tenant she was a loser and didn't want the tenant to live in the rental unit anymore and was evicted. The landlord took the shower curtain and left. Two days later, the landlord showed up again bashing on the door and ringing the bell. The landlord told the tenant she was getting the rest of her furniture, and the tenant had been using the landlord's bed frame, night table and dresser. The landlord was very aggressive and verbally abusive, took the toaster and went into the bedroom of the rental unit. The landlord went into the bedroom, took the tenant's belongings out of the dresser and threw it on the floor. The tenant's jewelry box and a box of dishes were broken in the process, and the tenant called the police.

The landlord served the tenant on March 31, 2015 with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated March 31, 2015 and contains an expected date of vacancy of April 30, 2015. The reasons for issuing the notice are:

- The tenant is repeatedly late paying rent;

- Tenant or a person permitted on the property by the tenant has:
 - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has not done required repairs of damage to the unit/site;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant was there and saw the landlord's witness tape the notice to the door of the rental unit.

The tenant further testified that rent was late on one occasion because the parties were out together in the landlord's vehicle and the tenant told the landlord on 3 occasions that she had to get to the bank before 3:00, but the landlord didn't take the tenant to the bank. On 2 other occasions the landlord told the tenant that she didn't get the rent, but the tenant sent it several times by way of e-mail transfer. Notification is sent by the bank to the landlord's email and her phone by text message. The landlord did mention the cost of service charges by the bank, but at the outset of the tenancy the parties talked about it and agreed to that method of payment, and rent has always been paid that way. Other payments went through fine and on time; the tenant does not know when the landlord chooses to accept them.

Since the landlord entered the rental unit and ransacked the tenant's home, the tenant changed the lock to the rental unit. A copy of an invoice has been provided and it's dated March 17, 2015 for a cost of \$62.37, for which the tenant claims against the landlord. The tenant is also concerned of how many times the landlord has entered the rental unit without the tenant's knowledge, and would not have known that the lock was changed if the landlord hadn't tried to get in.

The tenant also claims \$60.00 as an estimated cost for the damaged jewelry box which was a gift from the tenant's mother. It has not been replaced but has a broken door and broken glass.

The landlord testified that the tenancy began on October 15, 2014 and a tenancy agreement was signed. The tenancy agreement provided for rent in the amount of \$800.00 per month payable on the 1st day of each month and the landlord collected a pro-rated amount of rent for October, 2014 as well as a security deposit in the amount of \$400.00. However, within a few days of signing it, the tenant said she couldn't afford to pay the full amount and asked to change the tenancy agreement to \$400.00 on the 1st and 15th day of each month. The tenancy agreement does not show what date that agreement was amended, however the semi-monthly payments began for November, 2014. The rental unit is a condominium style suite.

The parties do not reside in the same community, and the landlord agrees that the parties were together on December 31, 2014 and the tenant said she had to get to the bank. However, the tenant didn't say why or what time. The tenant was late with rent for January 1, 2015. Rent for February 1, 2015 wasn't received until the 3rd. Rent has been paid on time since.

The landlord also testified that she gave the tenant notice to attend the rental unit to retrieve her belongings. The parties had talked about renting the unit furnished for \$900.00 per month or unfurnished for \$800.00 and the tenant was well aware that furniture was not included in this tenancy. When the landlord arrived at the rental unit, the tenant let the landlord in. The landlord asked for help with emptying the dresser, but instead, the tenant video taped the landlord. The bed was also being moved out, so the landlord could not put the tenant's personal belongings on the bed and the only other place was the floor. The landlord noticed that the tenant's jewelry box was already damaged, and the landlord's furniture was also damaged. The tenant called the police and while on the phone, the landlord checked her key, which is keyed to 2 locks, and only one would work. The landlord does not believe the lock was changed on March 17, 2015 and believes it was done prior to March 7, 2015. The policeman also told the tenant she had to give the landlord a key; the landlord asked for a key, but the tenant refused to comply. The tenant has breached a material term of the tenancy agreement, and has seriously jeopardized the lawful right of the landlord to have emergency access to the rental unit, and the tenant has not repaired the damages to the landlord's furniture.

The landlord did not make an oral request for an Order of Possession.

Analysis

Firstly, with respect to the 1 Month Notice to End Tenancy for Cause, where such a notice is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*.

With respect to the reasons for issuing it, the general rule is that a minimum of 3 late payments in a year justifies ending a tenancy for repeated late rent. The landlord testified that the tenant was late on 2 occasions, and I do not find that to be sufficient for ending a tenancy.

The tenant made the application for dispute resolution on March 31, 2015 seeking an order permitting the tenant to change the locks to the rental unit, but the tenant had

already done that. The parties don't agree on the date, however the tenant's application also seeks an order suspending or setting conditions on the landlord's right to enter the rental unit. There is absolutely no evidence before me that the landlord ever entered the rental unit contrary to the *Act*. The parties agree that the tenant let the landlord in and the tenant knew the landlord was going to retrieve furniture that day. Perhaps the landlord arrived early, but the tenant let the landlord in, which is permitted under the *Act*.

In the circumstances, I find that the tenant has failed to provide any evidence to support the applications before me. I further find that the tenant has failed to establish that the landlord should reimburse the tenant for the cost of the lock, and that the tenant did not have any right to change the lock. As a result, I find that the tenant has seriously jeopardized the lawful right of the landlord to have access to the rental unit for emergency purposes to protect life or property.

The tenant's application is hereby dismissed in its entirety without leave to reapply.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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: May 12, 2015

Residential Tenancy Branch

