



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlords: OPC, FF
 Tenants: CNC, MNDC, OLC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords; their legal counsel; the tenant and her agent. Both parties had arranged for witnesses to be available but no witnesses were called to provide any testimony. Both parties provided documentary evidence and affirmed testimony in support of their positions.

At the outset of this hearing the tenant confirmed that she intends to vacate the rental unit on September 30, 2015. She also confirmed that as a result she no longer disputes the 1 Month Notice to End Tenancy for Cause and had no objection to the issuance of an order of possession to the landlords effective September 30, 2015. The landlords confirmed they had also had no objection to such an order of possession.

During the hearing the parties agreed that they would conduct the move out condition inspection of the rental unit on September 30, 2015 at 1:00 p.m. and that tenant's work address would be the tenant's forwarding address for the purposes of the disposition of the security deposit at the end of the tenancy. The landlords confirmed they have the tenant's work address. Based on the agreement of both parties I find the tenant has provided her forwarding address to the landlord this date.

Based on the above, I amend the tenant's Application to exclude seeking to cancel the 1 Month Notice to End Tenancy for Cause issued on July 13, 2015. As the parties have agreed to the landlord being issued an order of possession the only issue remaining on the landlords' Application is in regard to their claim to recover the filing fee for their Application for Dispute Resolution.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for moving costs and to recover the filing fee from the landlords for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 47, 67, and 72 of the *Act*.

Background and Evidence

Both parties have submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on July 26, 2014 for a 21 month fixed term tenancy beginning on September 1, 2014 with a monthly rent of \$1,525.00 due on the 1st of each month with a security deposit of \$750.00 paid; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on July 13, 2015 with an effective vacancy date of August 31, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant or the landlord.

The tenant submits that the landlord met with her in July 2015 and told her that they disapproved of her living with a man out of wed-lock. She submits the landlords stated they disagreed with her lifestyle choices and she was presented with a 1 Month Notice to End Tenancy for Cause the next business day.

The tenant's Application for Dispute Resolution states: "I am seeking immediate cancellation of this notice and one months rent to cover my cost of moving as I will be unable to live under these conditions." [reproduced as written]

The tenant testified that she originally wanted to dispute the Notice and remain living in the unit but that since the notice was issued she stated the landlords have harassed her by attempting entry to the rental unit without adequate notice.

The tenant's written submissions and the landlord's evidence include correspondence between the tenant's boyfriend and the landlord that indicates that the tenant was not allowing the landlords to access to the rental unit to show the unit to potential tenants until this dispute was resolved by this hearing. Specifically, the tenant's boyfriend wrote, in an email dated July 17, 2015 to the landlords:

"Please cancel all showings as the property is not available for rent at this time. We will be advised of an arbitration hearing next week and nothing will happen

until such time as an adjudicator has made determination based on the facts presented. Should you attempt to enter the premises the RCMP will be called. I will be at the property but you are not allowed to show it. Please govern yourself accordingly.” [reproduced as written]

The tenant seeks compensation equivalent to 1 month’s rent for the cost of moving because she felt she had no choice but to vacate the property due to the landlords’ harassment.

The landlords submit that while the cause identified in the 1 Month Notice to End Tenancy for Cause was related to the continued complaints they had received from other occupants in the residential property about the tenant’s use of loud motorcycles driven on the private road of the property, they issued the notice as a direct result of an altercation they had with the tenant’s boyfriend.

The landlords submit that on July 11, 2015 they had had a discussion with the female tenant about the complaints that they had received about her loud motorcycle. They submitted that at the time the tenant indicated that her and her boyfriend had purchased a new home and that she would agree to move out of the rental unit.

Arrangements were made as to how this would be documented and the parties went their own way. The tenant confirmed, at least part, of these discussions and that she later decided that she did not want to move out and so she did not following through with the requested documentary follow up agreed upon.

The landlords submit that shortly after this discussion the tenant’s boyfriend berated the female landlord and threatened her with having a motorcycle organization go after her. They submit that the boyfriend also repeated the same threats to the male landlord. The landlords submit that after this altercation they decided they needed to end the tenancy and issued the 1 Month Notice.

The tenant testified that this event did occur, albeit not as described by the landlords, and that it occurred on July 20, 2015 and not on July 11, 2015 as per the landlords’ submissions.

I note the tenant submitted a typewritten statement dated July 17, 2015 attributed to the tenant’s boyfriend that outlines his version of the events of July 11, 2015 (the interaction between the boyfriend and both landlords), July 13, 2015 (the receipt of the 1 Month Notice to End Tenancy for Cause), and July 15, 2015 (the provision of a notice from the landlord for a showing of the rental unit).

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property or the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

Section 47(4) allows a tenant who receives a notice under Section 47 to apply to dispute the notice within 10 days of receiving it. Section 47(5) states that if a tenant does not file an Application for Dispute Resolution seeking to cancel such a notice the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the unit by the effective date of the notice.

In the case before me, the tenant did submit her Application for Dispute Resolution within 10 days of receiving the Notice. However, as the tenant withdrew the portion of her Application seeking to cancel the Notice, I find the tenant no longer disputes the reasons provided by the landlord as cause for ending the tenancy.

As a result, I find the tenant accepts the landlord did have cause to end the tenancy. As such, I find the tenant has failed to provide any evidence that the landlord, in issuing the above Notice, has breached the *Act*, regulation or tenancy agreement.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property. Section 29(2) stipulates that the landlord may inspect a rental unit monthly.

Based on the submissions of both parties I find the landlords were attempting to gain access to the rental unit to show potential tenants should the 1 Month Notice be effective in an attempt to mitigate any losses resulting from the ending of the tenancy prior to the end of the fixed term.

The written submissions provided by both parties indicate the tenant's boyfriend had responded to the landlords advising them that their notice of entry to show the rental unit was "invalid" and violated the tenant's right to privacy by posting notices on the rental unit door.

I note that Section 88 of the *Act* states a landlord required to serve a document to a tenant by may do so by leaving a copy with the person; sending a copy by mail or registered mail to the address at which the tenant resides; sending a copy by mail or registered mail to a forwarding address provided by the tenant; leaving a copy at the residence with an adult who apparently resides with the tenant; by leaving a copy in a mailbox or mail slot for the address at which the tenant resides; **by attaching a copy to a door or other conspicuous place at the address at which the tenant resides**; or by transmitting a copy by fax number provided as a service address by the tenant. [emphasis added].

As such, I find the landlords were well within their authority to post any type of notices to the door of the rental unit, such as a notice of entry or a notice to end the tenancy.

Further, the tenant's boyfriend wrote in his written submission dated July 17, 2015 that on Wednesday, July 15, 2015 the tenant received the landlords' written notice to enter the unit to show the property on Friday, July 17, 2015 at 3:00 p.m.

It is not clear from these submissions how the tenant or her boyfriend determined that either the landlords' notices to enter or the proposed entries were invalid or a violation of the tenant's rights.

In relation to the notices of entry I find that if the tenant actually received the notice at least 24 hours prior to the proposed entry and that the landlords were compliant with the requirements of Section 29 to provide adequate notice. If the tenant and her boyfriend were relying on the deeming provisions in Section 90 of the *Act* I note that these provisions are only required if there is no evidence that the party receiving the Notice did not receive it prior to the date deemed.

In this case the tenant's boyfriend acknowledged receipt of the Notice the same day it was posted as such, the deeming provisions cannot be invoked.

As to the purpose of the entry, I find that the landlord had an obligation to attempt to re-rent the rental unit to minimize any losses they may suffer as a result of the tenancy ending prior to the end of the fixed term, particularly, if the landlords intend to seek compensation for any such losses.

As a result, I find the landlords' attempts to gain access to the rental unit for these showings were for a reasonable purpose as allowed for under Section 29 of the *Act*.

Again, I find the tenant has failed to establish the landlords have breached the *Act*, regulation or tenancy agreement. Specifically, I find the tenant has failed to establish

that she has suffered any losses as a result of a violation of the *Act*, regulation or tenancy agreement.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution in its entirety without leave to reapply.

As the tenant remained in the rental unit after the effective date of the Notice to End Tenancy and the landlords were required to seek an order of possession I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$50.00** comprised of the fee paid by the landlords for this application.

I grant a monetary order in the amount of **\$50.00**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: September 25, 2015

Residential Tenancy Branch

