



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, LAT, LRE MNDC, MNR, OLC, RPP

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent received by her on February 8, 2016. She also seeks a variety of relief relating to an alleged trespass by the landlord's agent, including damages, an order limiting the landlord's right of access, an order for return of personal property and an order that the landlord comply with the law and the tenancy agreement.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the ten day Notice is valid, entitling the landlord to an order of possession? Is there a tenancy? The landlord denies there is? If there is a tenancy what are its terms? Has the landlord trespassed entitling the tenant to damages and if so, what are the damages?

Background and Evidence

The rental unit is a three bedroom house.

The tenant received a tip about the house being for rent from a friend who rented the house next door from the respondent landlord.

The tenant attended at the house and met Ms. C.G., the wife of the landlord on or about January 20, 2016.

The tenant testifies that she struck an agreement with Ms. C.G. that she would rent the premises starting February 1st and that the rent would be \$900.00 per month. She would paint the interior of the home and remove some yard debris and that the \$450.00 security deposit and half of the \$900.00 February rent would be waived in consideration of that work. Thus, on February 1st she would pay \$450.00 for rent.

The tenant says she painted virtually all the interior walls of the house, with paint placed by the landlord in each room. She says she moved in on January 27th. She says Ms. C.G. said she would come by on February 1st to collect the \$450.00 and conduct a move-in inspection.

On February 1st, Ms. C.G. did come by but the tenant didn't have the full rent.

The tenant says that Ms. C.G. was to come by on February 5th to collect rent but didn't show up.

She says that on February 6th the landlord demanded the full February rent of \$900.00 plus a \$450.00 security deposit. He denied her agreement with Ms. C.G.

The tenant says that on February 6th the landlord arranged for Mr. A., the partner of her next door friend, to enter the house and remove all of the tenant's belongings out into the snow covered yard. She called the police and the man was arrested but later released.

The tenant testifies that she had to move all her belongings back into the home. She discovered that Mr. A. had found her wallet and removed a significant amount of cash she had for the rent.

She found the ten day Notice on her door on February 8th. She says she commenced this application on February 10th.

The landlord says there was no agreement to rent to the tenant and there was no waiver of any rent or security deposit.

He says that only a very small area of a living room wall needed painting and that the tenant had agreed to do it at no cost. He purchased the home in December 2015 and

the previous owner had left a can of paint to paint that particular area, nothing more; a half hour job. He provided photographs of the interior of the home. He says the tenant didn't remove any garbage from the yard.

He admits that he asked Mr. A. to move the tenant's belongings out. He did not consider the tenant to be a lawful tenant. He says only a sofa was removed from the house before the police arrived. They told him to give the tenant a ten day Notice to End Tenancy for unpaid rent, which he did.

The landlord says that the tenant later apologized to Mr. A. for saying he stole her money.

He says he prepared a tenancy agreement but the tenant refused to sign and would not answer his phone calls.

Analysis

The first question is whether or not there is a tenancy agreement. Obviously there is not written agreement.

I find that there was a verbal agreement. I consider it extremely unlikely that Ms. C.G. would have permitted the tenant to enter and improve the premises had not there been an agreement that the tenant would rent from February 1st.

Ms. C.G. was the one who negotiated the tenancy with the tenant. For reasons not explained, she did not give evidence at this hearing. The best evidence about what the tenant and Ms. C.G. negotiated is the direct evidence of the tenant and I accept it.

Based on that testimony I find that the agreement struck with Ms. C.G. was that the tenancy would start February 1st at a regular monthly rent of \$900.00, that in light of the painting and garbage removal the requirement of a security deposit was waived and the rent due February 1st would be only \$450.00.

The tenant did not pay any rent for February and the landlord was right to issue a ten day Notice to End Tenancy. However, that Notice demands the full \$900.00 February rent when only \$450.00 was owed. The Notice is therefore defective in a material particular and cannot stand. I hereby cancel the ten day Notice.

There is no dispute but that Mr. A. entered the premises on the landlord's authority and removed tenant belongings. Such was a clear breach of the tenant's right to exclusive possession of the premises. It was a trespass.

The burden of proof of loss resulting from the trespass is on the tenant. On the competing evidence she has not demonstrated that anything more than the admitted sofa was removed. It should be noted that in these modern times virtually everyone has ready access to a camera. A photo of the tenant's belongings outside the house would have been a simple method to corroborate her testimony.

In result I find that the tenant suffered having to return a sofa into the home. For the trespass I award her the amount of \$100.00.

The tenant has not proved on a balance of probabilities that Mr. A., acting as agent for the landlord in entering the home, stole any money. I dismiss that item of the claim. The tenant is free to pursue her remedies with the police, who have an investigative power to pursue that matter.

I do not consider it necessary to make any order at this time regarding landlord entry to the premises, given what has been said above. The landlord should acquaint himself with his lawful rights and obligations regard his limited statutory right to enter the house during a tenancy.

Conclusion

There is a tenancy and it continues. The monthly rent is \$900.00, due on the first of each month, but for February 2016, when only \$450.00 was due. No security deposit is owed.

Unless agreed otherwise a landlord is responsible to provide the means to electrify and heat a rental unit. The tenant is responsible for the cost of heat and electricity. I find those utility costs are the responsibility of the tenant. It should be pointed out that a tenant does not have to agree to have utilities placed in her name.

The tenant is presently in arrears of rent of \$1350.00. I reduce that amount by the \$100.00 awarded above. The tenant owes the landlord \$1250.00 rent for February and March 2016. The landlord may issue a ten day Notice to End Tenancy if that amount is not paid forthwith upon the tenant receiving this decision.

I decline to deal with the tenant's mention of furnace problems. Now that the existence of the tenancy has been confirmed, if the tenant feels the furnace is not functioning properly she must formally notify the landlord. He is then responsible for investigating the alleged problem and taking steps to ensure that the furnace is functioning properly. If he fails to do so, the tenant may re-apply.

The applicant tenant's filing fee was waived.

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: March 12, 2016

Residential Tenancy Branch

