



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FF CNC MNDC

Introduction

This hearing convened pursuant to the tenant's application to cancel a notice to end tenancy for cause and for monetary compensation. The tenant and the landlord participated in the teleconference hearing.

Preliminary Issue – Landlord's Application

It did not come to my attention until after the hearing had concluded that the landlord had also filed an application, which was scheduled to be heard at the same time as the tenant's application. The landlord applied for an order of possession. The landlord did not mention his application in the hearing. I have reviewed the landlord's application and evidence, comprised of a USB containing an audio recording, and I am satisfied that the outcome would not have changed and it was not necessary for me to reconvene the hearing.

Issue(s) to be Decided

Is the notice to end tenancy for cause valid?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenant rents a basement suite in the landlord's house. Monthly rent is due in advance on the first day of each month. In late February 2016 there was a flood in the rental unit. In compensation for loss of use of the flooded area while repairs are ongoing, the landlord gave the tenant a rebate of 50 percent of the rent for March and April 2016.

Notice to End Tenancy for Cause

On March 4, 2016 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reasons for ending the tenancy were that the tenant was repeatedly late paying rent and the tenant had assigned or sublet the rental unit without the landlord's permission.

a) Repeated Late Payment of Rent

The landlord stated that the tenant is constantly late paying the rent. The landlord submitted copies of rent receipts; however, all of the receipts are dated for the first day of the month. The landlord stated that this is because the receipts are premade. The landlord stated that this was the only evidence he had regarding repeated late payments of rent.

The tenant responded that he was a day late paying rent two or three times, but otherwise he always paid on time.

b) Assign or Sublet

The landlord stated that the tenant requested that their niece be allowed to stay with them for about a month, and the landlord was okay with that. However, the tenant's niece then overstayed and the landlord discovered that the tenant was charging her for rent and utilities. The landlord stated that the tenant's niece left after the flood occurred.

Monetary Claim

The tenant stated that after the flood they had to move most of their possessions into the living room. The tenant stated that the amount of space they can use is approximately 25 percent, and on that basis the tenant has requested that the total deduction from their rent be 75 percent.

The landlord stated that the tenant told him it was 50 percent of the unit that he could not use, not 75 percent.

Analysis

Notice to End Tenancy for Cause

I informed the parties in the hearing that I found the notice to end tenancy for cause was not valid for either reason indicated. The landlord did not provide sufficient evidence to establish that the tenant was repeatedly late paying rent. The landlord ought to have been more prudent and dated the rent receipts for the date rent was actually paid. The situation with the tenant's niece did not meet the definition of either subletting or assigning, as both would require the tenant to move out. Instead, the tenant's niece was essentially a roommate and occupant. I therefore cancel the notice to end tenancy dated March 4, 2016.

Monetary Claim

I find that the tenant is not entitled to a further deduction in his rent. The landlord and the tenant had a discussion and agreed that the tenant would receive a deduction of 50 percent of his rent for March and April 2016. I find that if the tenant had in fact lost use of 75 percent of the rental unit, he would have informed the landlord of that fact. Further, the tenant's rent does not only pay for floor space, but also for several other facilities including appliances, plumbing and so on. I therefore dismiss this portion of the tenant's application.

As the tenant's application was partially successful, I find that he is entitled to recovery of the \$100.00 filing fee for the cost of his application.

As I have cancelled the notice to end tenancy dated March 4, 2016, the landlord's application is dismissed and he is not entitled to recovery of the filing fee for the cost of his application.

Conclusion

The notice to end tenancy for cause dated March 4, 2016 is dismissed, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

The tenant's monetary claim is dismissed.

The landlord's application is dismissed.

The tenant is entitled to \$100.00 for recovery of his filing fee. This amount may be deducted from the next month's rent.

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 2, 2016

Residential Tenancy Branch