



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *OPC, CNC MND, 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 a monetary order for damages and for the recovery of the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant. Both parties 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 landlord entitled to a monetary order for damages?

Background and Evidence

The tenancy started in February 2013. The monthly rent is \$975.00 payable on the first of each month. The rental unit is an apartment located in a building that houses a total of 36 rental units.

Both parties agreed that an incident took place on the night of April 20, 2016 which was discovered on the morning of April 21, 2016. Graffiti with an obscene message was painted on the front door and side walls of the building. The message contained the full name of the tenant.

The tenant denied having any knowledge of the perpetrator and reported the incident to the police. The tenant purchased cleaning products and cleaned the graffiti to the best of her abilities, on the same day that it was discovered.

Paint was required to cover it up fully and the tenant informed the landlord that she was unable to get the exact shade of paint.

On June 01, 2016, the landlord served the tenant with a notice to end tenancy for cause. The reasons for the notice were that the tenant or a person permitted on the property by the tenant has put the landlord' property at significant risk and that the tenant has caused extraordinary damage to the property. The tenant disputed the notice in a timely manner.

The landlord testified that following this incident of vandalism, she feared for the safety of the tenant and the other occupants of the building. The landlord agreed that the camera installed on the outside of the building was a dummy and therefore there was no record of the vandalism that would assist in identifying the perpetrator.

The landlord purchased additional cleaning products and paint to finish the removal of the graffiti and is claiming the cost incurred along with the cost of labor. The landlord did not attach any receipts to support her claim.

Analysis

In order to support the notice to end tenancy, the landlord must prove the grounds alleged, namely that the tenant or a person permitted on the property by the tenant has put the landlord' property at significant risk and that the tenant has caused extraordinary damage to the property.

In this case, based on the landlord's testimony, I find that other than a couple of noise complaints made by the occupant of the unit below, over a year ago, there have been no other incidents or complaints regarding this tenant during this tenancy of over three years.

In the absence of a recording of the incident, I find that the landlord has not proven that the tenant or a guest of the tenant committed the vandalism; even though I accept on a balance of probabilities that is it more likely than not that the vandalism was the action of someone known to the tenant.

I find that the tenant cooperated fully with the landlord and made efforts to remove the graffiti. I further find that it appears that this incident was isolated and did not result in extraordinary damage to the rental property. Therefore I am not satisfied that the landlord has provided reasons that justify bringing this tenancy to an end.

Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated June 01, 2016. As a result, the tenancy shall continue in accordance with its original terms. The landlord is not entitled to her monetary claim for the cost of cleaning products and labor. Since the landlord has not proven her case she must bear the cost of filing this application.

The tenant is successful in her application and therefore I award the tenant the recovery of the filing fee of \$100.00.

The landlord would be wise to install cameras on the outside of the building to deter vandalism and provide information on the perpetrator, should this happen again.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue.

The tenant may make a one-time deduction of \$100.00 from a future 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: July 06, 2016

Residential Tenancy Branch