



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MND, MNR, MNSD, OPC, FF

Tenant's application: CNC, OLC, LRE

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The landlord applied for an order of possession and a monetary award. The tenant applied to cancel the one month Notice to End Tenancy for cause and for other relief, including an order that the landlord comply with the Act and restricting his access to the rental unit. The hearing was conducted by conference call. The landlord attended with the named participant and the tenant called in and participated in the hearing. The landlord and the tenant exchanged documents before the hearing and provided me with copies of those documents.

Issue(s) to be Decided

Should the Notice to End Tenancy for cause dated May 30, 2016 be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary award and if so, in what amount?

Should the landlord be ordered to comply with the Act, Regulation or Tenancy agreement?

Should the landlord's right to access the rental unit be restricted?

Background and Evidence

The rental unit is a basement suite in the landlord's house in Surrey. According to the landlord, it is a two bedroom unit with a den. The tenant claimed that it is a three bedroom unit. The tenancy began January 1, 2016 for a one year term with rent in the amount of \$1,000.00 payable on the first of each month. According to the agreement the tenant is to be responsible for payment of 40% of utilities. The landlord prepared

two separate tenancy agreements, one was in the standard form provided by the Residential Tenancy Branch, the second was titled: "Residential Lease Agreement" and included additional terms not part of the standard for tenancy agreement. Among those terms was the provision that: "if additional persons (except two kids and tenant and her mother) living on property will be charged \$50 per person."

On May 30, 2016 the landlord personally served the tenant with a one month Notice to End Tenancy for cause. The Notice to End Tenancy required the tenant to move out of the rental unit by June 30, 2016. The landlord stated two reasons for ending the tenancy; first, that the tenant has been repeatedly late paying rent since the tenancy began and second, that there are an unreasonable number of occupants living in the rental unit. The landlord also added a handwritten reference to smoking.

The landlord testified that He agreed to rent the unit to the tenant for occupancy by two adults and two children, but after the tenant moved in it has been occupied by two additional children so that there are two adults and four children living in the rental unit. The landlord contended that this is an unreasonable number of occupants for what is a two bedroom suite.

The landlord said that the tenant has been repeatedly late paying rent throughout the tenancy. He submitted receipts for the rent payments from the tenant. The rent for February was not paid until February 11th and March rent and utilities were paid on March 17, 2016. April rent was not paid until April 28, 2016. May rent was paid on May 5th and rent for June was paid on June 3rd. July rent was the only month since January that rent was paid on time.

The tenant disputed the landlord's evidence as to rent payments, she said that the receipts issued by the landlord were given late and don't reflect the dates that rent was paid. She also submitted that the April 28th rent payment was given for the month of May and was paid in advance.

The landlord testified that receipts were always given on the same day that rent payments were made. He referred to the fact that there was a receipt given on May 5, 2016 that explicitly stated that it was a receipt for the May rent payment. The landlord also referred to copies of text messages from the tenant telling the landlord on several occasions that the rent would be late.

The landlord requested a monetary award for the following:

- Gas bill, 405 of \$37.82: \$15.17
- Water bill: \$75.17

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|---|------------|
| • \$50 additional charge January –June: | \$300.00 |
| • Late rent fee \$10/day 15 days late: | \$150.00 |
| • Damage on new floors estimated cost: | \$500.00 |
| Total: | \$1,040.34 |

The landlord submitted a copy of an invoice for a gas bill and a copy of a utility bill from the City of Surrey for annual sewer and water charges for the period from January, 2016 to December 31, 2016. The total of sewer and water charges for the secondary suite for the year was \$902.00. The landlord has claimed a monthly payment with respect to that amount.

The tenant said that she had to report the landlord to the police because he threatened her. She said the threat was that he would contact her previous landlord who had threatened to kill the tenant. She accused the landlord of placing cameras in the rental unit to spy on her. She also complained that the tried to restrict her visitors and prevented her children from playing in the yard. The tenant said that she made a second police complaint because she said the landlord was crouching down, looking in her daughter's bedroom while she was changing.

The landlord denied the tenant's claims. He said that he has had to restrict the children's access to his yard because they were destroying his garden. The landlord said there was no truth to the tenant's claims that he was spying on the tenant or looking in windows at the occupants

Analysis

The Residential Tenancy Act provides by section 47 (1) (b) that a landlord may end a tenancy by giving a notice to end the tenancy if the tenant is repeatedly late paying rent. Residential Policy Guideline #38 states that: "Three late payments are the minimum number sufficient to justify a notice under these provisions." The policy guideline also contains the following comments:

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision

The *Act* does not define what constitutes “repeatedly late”. The policy guide says that three late payments are the minimum that would warrant the issuance of a Notice. The guideline also states that exceptional circumstances may be taken into account when determining whether a tenant has been repeatedly late paying rent. The tenant, by her own admission in text messages has been late paying rent on several occasions. I do not accept the tenant’s testimony that the receipts given for rent payments were not accurately dated. Her evidence with respect to pre-payment of May rent is contradicted by the receipts themselves, including a receipt for the late rent payment in May.

The evidence establishes that the tenant has been late paying rent on at least five occasions; I therefore decline to cancel the Notice to End Tenancy and I dismiss the tenant’s application to cancel the Notice to End Tenancy. Because of my finding with respect to repeated late payments of rent it is not necessary or me to make a finding as to whether or not there are an unreasonable number of occupants living in the rental unit.

The tenant has paid rent for July. I allow the landlord’s application for an order of possession to be effective July 31, 2016 after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to payments for gas and water utilities in the amounts of \$15.17 and \$75.17 respectively. I do not allow the claim for additional occupancy charges; it appears that the tenant may have been paying an additional charge for some months. The landlord did not submit evidence to show that he made a written request for payment of an additional occupancy fee and this claim is dismissed without leave to reapply. The landlord claimed the sum of \$150.00 for late fees charged at a rate of \$10.00 per day. The *Residential Tenancy Act* and Regulations limit late fees to a

maximum amount of \$25.00 per late payment, if provided by the tenancy agreement. The landlord's charge is for an illegal amount and the claim is therefore denied. The landlord claimed an amount for alleged damage to floors. This claim is premature and it is dismissed with leave to reapply. When the tenancy has ended the landlord is at liberty to make a claim for cleaning or repairs. The tenant's security deposit must be dealt with in accordance with the *Residential Tenancy Act* at the end of the tenancy and I make no order with respect to the deposit in this decision. The landlord is entitled to recover the \$100.00 filing fee for his application. The total monetary award to the landlord is the sum of \$190.34 and I grant the landlord an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court.

The tenant sought an order requiring the landlord to comply with the Act and restricting his right to access the rental unit. The tenancy will be ending shortly and the tenant's evidence has not satisfied me that there are grounds for such orders; this portion of the tenant's application is dismissed.

Conclusion

The tenant's application to cancel the Notice to End Tenancy has been dismissed. The landlord has been granted an order of possession effective July 31, 2016 and a monetary award in the amount of \$190.34.

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 08, 2016

Residential Tenancy Branch