



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OLC LRE

Introduction

Both parties attended the hearing and the tenant confirmed service of the Notice to End Tenancy dated July 21, 2016 to be effective September 30, 2016 and the landlord confirmed personal service of the tenant's Application for Dispute Resolution. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order that the landlord comply with the Act, to not enter without notice as required by section 29 and to provide keys to maintain privacy of their space;
- b) To reduce rent pursuant to sections 27 and 65 of the Act for reduction in living area; and
- c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord is entering their unit without notice and has reduced their living space? If so, are they entitled to keys and reduction of rent?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced February 1, 2013 under a previous owner, rent was \$1250 a month and a security deposit of \$625 was paid.

The parties explained the background. The current landlord took possession of the property in July 2016, rent at that time was \$1150. The previous landlord had reduced the rent when she legalized the suite and was compelled by City Bylaws to reduce the space of the suite. The tenant said she assured them they would still have exclusive use of the common area entryway. They lost their original lease and the new one was the form obtained from the internet and it did not say anything about the common area. The current landlord wanted to use the common area entryway and also was concerned about the tenants storing items in the room that has the hot water tank and electrical

panel which is in the common area. He said clear access is required to this room and the tenants had many belongings in it which made access difficult.

The tenants request that they be granted exclusive use of the common area and if not, to obtain a reduction in rent for the withdrawal of this exclusive use. They can still enter and keep shoes there. The tenant said they are not disputing the Notice to End Tenancy for owner's use of the property but asked about their rights if the owner does not do it. I referred them to section 51 of the Act. They have received their compensation under section 49 of the Act by not paying rent for September 2016 and both are aware of section 38 regarding dealing with their security deposit in a timely way.

Included with the evidence are copies of the Notice to End Tenancy, emails between the realtor and other parties, a plan of the suite and a City letter outlining the permitted uses and statements of the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As the tenant does not dispute the Notice to End Tenancy and the landlord requests an Order of Possession, I grant the landlord an Order of Possession effective September 30, 2016 which is the effective date of the Notice to End Tenancy.

In respect to the tenant's application for exclusive possession of the common entryway area, I find there is no legal basis for it. Although they said (and the previous owner confirmed it in a letter) that the previous owner had granted them exclusive use of it, I find she was violating the provisions of the permitted uses as outlined in the letter of the City and the accompanying plan showing the space as a 'common foyer'. Also, the previous owner never signed a tenancy agreement with them granting them exclusive use of this space. I find they have no legal right to exclusive use of this space and they must clear out belongings forthwith which restrict the common use such as items blocking doorways and items in the hot water/electrical room which impede access to it. As I find they do not have a right to exclusive use, I find they are not entitled to compensation for withdrawal of exclusive use. I note furthermore that the previous owner reduced their rent from \$1250 to \$1150 when she legalized the suite and the entry way became a 'common foyer'.

For all of the above reasons, I dismiss the application of the tenant.

Conclusion:

The Application of the Tenant is dismissed. The tenancy is at an end on September 30, 2016. An Order of Possession is issued to the landlord effective September 30, 2016. No filing fee is awarded due to lack of success.

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 08, 2016

Residential Tenancy Branch