



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;

This matter was originally scheduled for September 21, 2016 however due to the tenant needing emergency medical attention, both parties agreed to adjourn the matter. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award for loss arising out of this tenancy?

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about October 1, 2015. Rent in the amount of \$760.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$380.00 and a \$380.00 pet deposit. The landlord testified that the tenant left plants on her balcony and boxes of dirt that were soaked with water. The landlord testified that the water drained down onto the balcony below disturbing the tenants. The landlord testified that due to this water leakage from the plants, it rotted the

balcony deck requiring repairs. The landlord testified that the tenant put up “chicken wire” to enclose her balcony; which the landlord alleges is not permissible. The landlord testified that the tenant made numerous slanderous and defamatory comments about her. The landlord testified that the plant and chicken wire issues have been resolved but does not want this tenant to reside in the building any longer based on the defamation of character comments she has made. The landlord testified that the tenant should not be entitled to any compensation as she has not advised them of this claim until she was served the notice of hearing documents. The landlord testified that the tenant is in fact the one that has caused loss of quiet enjoyment to the landlord and other tenants and her claim should be dismissed.

The tenant gave the following testimony. The tenant testified that the landlord has been aggressive in her behaviour and abuses her authority. The tenant testified that she obtained verbal authorization to put up the chicken wire. The tenant testified that the chicken wire and water leakage issues were resolved in a very timely manner. The tenant testified that she did not defame or slander the landlord, but in any event, the matter can be heard in civil court, not through the Tenancy Branch. The tenant testified that her quiet enjoyment has been affected due to the landlords’ actions and that she should be given all rent paid; her deposits and future moving expenses for a total amount of \$14000.00.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

When a landlord issues a notice under Section 47 of the Act they bear the responsibility in providing sufficient evidence to support the issuance of that notice. The landlord issued the notice on the following grounds.

Landlord's notice: cause

47 (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

(d) the tenant or a person permitted on the residential property by the tenant has

(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord confirmed that the issue of the water draining off of the tenant's balcony and the "chicken wire" has been rectified and is no longer an issue. The landlord advised that she asks that this tenancy end on the grounds of slander and defamation there in which she alleges the tenant has engaged in illegal activity that has jeopardized her lawful right or interest. It's clear to me that the parties have some issues with one another however; the landlord has not provided sufficient evidence of slander or defamation. It is worth noting that defamation is the exclusive jurisdiction of the Supreme Court. Based on the above, the insufficient evidence before me and on a balance of probabilities I hereby set aside the notice. It is of no force or effect.

As for the tenants monetary claim; Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I have reviewed the documentation and considered the testimony of both parties. The relationship between these two parties is an acrimonious one and that each feel the other has acted inappropriately. However, I find that the tenant has failed to provide sufficient evidence to support her claim for loss of quiet enjoyment. I find that the "anxiety and stress" both parties eluded to can be attributed to going through the dispute resolution process and due to the lack of willingness of the parties to

communicate with each other. Based on the above I dismiss the tenants claim for \$14000.00 compensation.

Conclusion

The One Month Notice to End Tenancy for Cause dated July 28, 2016 is set aside, it is of no effect or force. The tenancy continues.

The tenants' monetary claim is dismissed in its entirety.

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: October 24, 2016

Residential Tenancy Branch