



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC OPC LRE OLC PSF RPP

Introduction:

Both parties made applications, the landlord to enforce a Notice to End the Tenancy for cause dated October 28, 2016 to be effective October 28, 2016 and the tenant to cancel it. The landlord said they had made a typographical error and the Notice should have been dated September 28, 2016 as evidenced by their witness to service. I find the dates on the Notice to End Tenancy are automatically corrected to September 28, 2016 to be effective October 31, 2016 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. Both parties and witnesses were present at the hearing. The landlord applies for an Order of Possession and a monetary order for November rent 'for use and occupancy' and to recover the filing fee.

The tenant applies to cancel the Notice to End Tenancy, to restrict the landlord's right to enter the unit pursuant to section 29 of the Act, to order the landlord to return her personal property and to provide services and facilities. She requests \$6000 as compensation for ongoing harassment, for the loss of her belongings and defamation of her character.

Issues: Is the landlord entitled to an Order of Possession for a material breach of the tenancy agreement and fraud?

Or is the tenant entitled to any relief?

Has the tenant proved on a balance of probabilities that the landlord is harassing her, defaming her and caused the loss of her belongings?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. This was a very difficult hearing as the parties already have a Review Hearing scheduled for December 21, 2016 based on a previous Order of Possession and Monetary Order granted on a Direct Request. As a result, their emotions were high and they continually interrupted each other. They are each claiming fraud against each other and say this will be litigated at the Review Hearing.

The tenant said that all of her evidence that would pertain to her claim today has been filed in the file for the Review Hearing.

The landlord claims that this should be a separate hearing as it is a one month notice based on fraudulent information given on the tenant's Application to Rent on September 21, 2016 where she allegedly stated a false name and previous address. This false information resulted in incorrect credit and other checks so a tenancy agreement was signed on September 24, 2016 and the tenant was given permission to move in on September 26, 2016. The landlord subsequently discovered that the tenant had outstanding monetary orders against her in her other name. The landlord said the tenant did not book the elevator to move in but arrived with her furniture on September 26, 2016. The move in was delayed according to the concierge because of her not booking the elevator and when they offered to store her items, she refused. The landlord said her moving firm said they ran out of time and left some of her items outside which may have resulted in theft. The tenant said the landlord's agent had changed the keys so she could not enter and she has proof of this in the file to be heard on December 21, 2016. The tenant also denies she gave a false name and said her address as provided was correct; a witness at the hearing confirmed she had lived at another address from May 2015 to September 2016. The landlord provided evidence of a previous Decision wherein another landlord obtained an Order of Possession against the tenant on August 5, 2016 at a different address. The witness said the tenant had other units for her children.

Analysis:

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside and I find the tenant disputed this Notice in time, within the 10 days permitted under section 47 of the Act. The hearing proceeded for about 45 minutes with both parties interrupting each other and claiming evidence given was incorrect or fraudulent.

However, the parties already have a Review Hearing scheduled for December 21, 2016 which the tenant said was granted for fraud. The Order of Possession and Monetary Order were suspended pending that hearing. The tenant also said all of her evidence was in that file. I find the landlord's Notice to End Tenancy for cause scheduled for hearing today was based on fraudulent misrepresentation of the tenant's name and address on her Application and deliberate providing of an invalid pre authorized debit agreement which is resulting in unpaid rent. I find the previous Order of Possession and Monetary Order for October's rent were suspended pending the Review Decision.

As both parties are claiming fraud against each other and a Decision on the Order of Possession and Monetary Order for October's rent will be made on or about December 21, 2016 on a Review Hearing, I decline to grant Orders to either party today.

Conclusion:

I dismiss the applications of both parties without recovery of the filing fees. I find the landlord's Application was made prematurely while outstanding Orders are suspended and the tenant's was made when she did not have available evidence as she filed it for the Review Hearing. I grant each party leave to reapply within the legislated time limits if their disputes are not resolved in the Review Hearing.

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: November 29, 2016

Residential Tenancy Branch