



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated September 28, 2016. The Notice states that the rental unit will be occupied by the landlord or the landlord's close family member. Such grounds, if proved, are lawful grounds for ending a tenancy under s. 49 of the *Residential Tenancy Act* (the "Act").

The tenant also seeks a monetary award claiming that after giving the Notice the landlord intentionally disturbed him by banging and stomping around in her suite above his.

At the start of the hearing the tenant objected to this arbitrator hearing the matter. He claims that in a previous hearing between the parties he felt he was not given a fair hearing and that the landlord submitted evidence he had not received.

While it is best to accommodate parties in an effort to ensure that justice is not only done but also seen to be done, in this case I declined to refer the matter to a different arbitrator. In large part the decision (file number recorded on cover page of this decision) speaks for itself. It was a fair decision based on the facts determined from the evidence submitted by the parties. It should be noted that at the second day of hearing it was discovered that the landlord had filed material which she had not share with the tenant, contrary to the Rules of Procedure. However, none of that material formed the basis of the decision rendered.

The tenant does not have a substantial reason for requiring a different arbitrator and to delay the matter, perhaps for the weeks or months involved in re-assigning this dispute, would work a hardship on the landlord if her Notice proves to have been a valid Notice ending this tenancy.

Both parties attended this hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during this hearing show on a balance of probabilities that the landlord has a good faith intention to have the rental unit occupied by herself or a close family member? Has the landlord caused noise by banging and/or stomping in her suite such as to cause a disturbance warranting an award of damages? If so, what is the proper measure of damages?

Background and Evidence

The rental unit is a one bedroom basement suite in the lower portion of the landlord's home. This tenant is the only tenant in the house.

The tenancy started in May 2015. The monthly rent is \$800.00, due on the first of each month, in advance. The landlord holds a \$400.00 security deposit.

The landlord testifies that she wishes to incorporate the tenant's suite back into her home and use it as an art studio. The suite has a heated floor and is particularly amendable to that use by her. She says that the suite was originally created as a home for her mother. Her mother passed away and the landlord thought she'd try renting it out. This tenant is her first tenant and the experience has so distressed her that she wants to stop being a residential landlord.

The tenant says that the day after the parties received my prior decision, in which the tenant was, at least partially successful, the landlord started banging around upstairs in an effort to disturb him. He called the police, who attended and, he says, told the landlord to be quiet. He says she refuses to comply and still bangs and stomps regularly.

He says the landlord has plenty of room in her home and doesn't need his suite.

On cross examination the tenant confirmed that the noise had stopped for couple of weeks in November while the landlord was away and that it has not re-occurred since her return.

At hearing the tenant also stated that his washing machine had stopped working and that on October 4 he left a note about it on the landlord's door but nothing has been done.

The landlord says the tenant's claims about banging and stomping are "bogus" and did not happen, though the police did come once. She says she was unaware of the washing machine problem until she received a copy of the tenant's notice with an evidence package from him in mid-November.

Analysis

As stated at hearing, I refuse to admit the landlord's verbal testimony about the reason for the Notice. She has not provided the tenant with any material or otherwise given any particulars about who the proposed occupant of his suite will be. As a result, the tenant comes to this hearing with no forewarning about the case he must meet. That is contrary to fundamental principles of our justice system.

The two month Notice to End Tenancy dated September 28, 2016 is hereby cancelled. The landlord is free to issue another as there has been no decision on the merits about the grounds for the Notice.

I dismiss the tenant's claim for damages for noise from the landlord's suite. The tenant says the landlord makes bothersome noise, the landlord says she does not. On this evidence, without objective corroboration, I can find no reasonable basis to prefer one's testimony over the other's. The burden of proof initially falls to the alleging party; the tenant in this case. He has not satisfied that burden of proof.

I decline to adjudicate the tenant's claim about the washing machine. It was not particularized in his application or the attached sheet of particulars. The landlord has not had fair notice and an opportunity to mount a defence to that claim. The tenant is free to re-apply.

It should be noted that despite declining to deal with the washing machine claim, it was raised at hearing and the landlord has seen the tenant's notice about the machine. Normally, a landlord in such a situation is obliged to investigate the matter and take such steps as the circumstances reasonably required.

Conclusion

The tenant's application to cancel the two month Notice to End Tenancy dated September 28, 2016 is allowed. The Notice is cancelled.

The remainder of the tenant's claim is dismissed.

As the tenant has been successful in having the Notice cancelled, I award him recovery of the \$100.00 filing fee for this application. I authorize him to reduce his next rent due January 1, 2017 by \$100.00 in full satisfaction of the claim.

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: December 03, 2016

Residential Tenancy Branch