



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUTTON MAX REALTY AND PROP. MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated March 28, 2017 to be effective June 30, 2017 was served by registered mail. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To order the landlord to repair and obtain a rent rebate for utilities paid for another tenant;
- c) To order the landlord to stop harassing and threatening the tenant; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

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 current tenancy commenced in March 1, 2016 on a fixed term lease to April 30, 2017, then on a month to month, rent is \$900 a month and there is no security deposit. The tenant explained it was used by him to cover some shortfalls in rent in the past.

The landlord served a Notice to End Tenancy for landlord's use of the property as the owner and her daughter want to move into the property. Included with the evidence is a

statement by the owner. The tenant said a cousin from another country wanted to move in. The landlord denied this and said the owner has a foreign name and may have foreign visitors but she intends to occupy the unit herself with her daughter.

Included with the evidence is a copy of the Notice to End Tenancy, registered mail receipts, the lease, the owner's statement, and a list of complaints by the tenant.

The tenant's mother sent in 57 pages of late evidence. As explained to the tenant during the hearing, he claimed no monetary order from the landlord on his Application so I could not legally give him a monetary order, even if he may have some justification for it.

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

.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the owner occupying the unit herself with her daughter. I find the landlord's credibility is supported by her agent's statements and her written letter of intent to occupy the unit. The tenant is entitled to a free month's rent for June 2017 and they have assured the tenant they are providing this.

The tenant requests the landlord repair the property. I find insufficient evidence that he has requested the landlord in writing to make necessary repairs and the landlord has refused to do so. Although the tenant said he had lots of emails to prove his point, they were not included in evidence. As he is vacating June 30, 2017, I find it is moot to order repairs at this point. I dismiss his request for repairs.

The tenant's mother submitted 57 pages of late evidence concerning unfair gas bills and an illegal increase in rent. However, I decline to consider this late evidence for the tenant made no monetary claim on his Application for damages and if he reapplies, another arbitrator will consider his claim. An attempt was made to settle the matter between the parties without success. I dismiss this portion of his claim with leave to reapply.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. I find the tenant not entitled to recover his filing fee due to his lack of success. The tenancy is at an end on June 30, 2017. An Order of Possession is issued to the landlord effective June 30, 2017.

I give the tenant leave to reapply for damages within the legislated time limits.

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: May 23, 2017

Residential Tenancy Branch