



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC, LRE, LA, FF

Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution wherein the Tenant requested an Order cancelling a 1 Month Notice to End Tenancy for Cause issued on April 8, 2017 (the "Notice"), an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the tenancy agreement, an Order restricting the Landlord's right to enter the rental unit, authority to change the locks on the rental unit, and to recover the filing fee.

The hearing was conducted by teleconference on May 29, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the notice be cancelled?
2. Should the Landlord be ordered to provide receipts for cash payments?
3. Should the Landlord's right to enter the rental unit be restricted?

4. Should the Tenant be authorized to change the locks on the rental unit?
5. Should the Tenant recover the filing fee?

Background and Evidence

Residential Tenancy Branch Rules of Procedure provide that when a Tenant applies to cancel a Notice to end Tenancy the Landlord must present their evidence first as they bear the burden of proving the reasons cited in the notice.

The Notice introduced in evidence contained the following reason:

- The Tenant is repeatedly late paying rent.

The Landlord also wrote on the Notice:

“Reason for notice our family is moving into bsmt suite”.

[Reproduced as Written]

The Agent for the Landlord confirmed the reason the Landlord issued to Notice was because she wishes to move family into the rental unit.

In support of her claims, the Tenant testified as follows.

She testified that the tenancy began August 2016. She stated that she does not have a tenancy agreement as the Landlord refuses to have a “paper trail”. She stated that rent is \$800.00 per month. The Tenant stated that the Landlord also refuses to accept rent paid by cheque and refuses to provide receipts for payment of the rent or pet damage or security deposit. The Tenant stated that she paid a \$400.00 pet damage deposit and a \$400.00 security deposit. The Tenant sought an Order that the Landlord provide a receipt for the cash payments including the payment she made for the security and pet damage deposit.

The Tenant also sought an Order restricting the Landlord from entering the rental unit. She stated she discovered the Landlord had entered the rental unit in January 2017 as she returned home early to find the Landlord “walking around in the rooms and kitchen”.

The Tenant stated that on another occasion in April of 2017, the Tenant caught the Landlord trying to enter the rental unit.

The Tenant stated that although the Landlord hasn't recently been coming into the rental unit (to her knowledge) she has been disturbing them as "every day" the Landlord knocks on the door without reason. She further said that when she goes to work the Landlord, and the Landlord's agent, will bother and verbally abuse the Tenant's 17 year old son.

The Tenant said that the Landlord has been bothering them "nonstop". She stated that she has called the police on numerous occasions because of the Landlord's behaviour and was informed by the police to make an application before the Residential Tenancy Branch. She also claimed her son had made a recording of the Landlord's behaviour. That recording was not in evidence.

In response, the Landlord's agent stated as follows. He confirmed that he has been involved with the rental as he is at the property at least every other day.

He further stated that each time the Tenant pays rent the Landlord leaves a receipt in an envelope at her front door. He confirmed however that the Landlord did not provide a receipt for the payment of the damage deposit which he said was \$400.00, not \$800.00 as alleged by the Tenant as the Tenant failed to pay the pet damage deposit.

10 days prior to the hearing, on May 19, 2017, the Landlord submitted a written document as well as copies of the rent receipts allegedly sent to the Tenant. The Landlord's agent confirmed this evidence was not sent to the Tenant. As the Tenant was not provided copies of this evidence I did not consider it in making my Decision.

The Landlord's agent testified that the Landlord denies she entered the rental unit in violation of the *Act*. He further stated that the other renter in the downstairs unit has been there for four years and can testify that the Landlord does not enter the rental unit, or bother the Tenant as alleged by the Tenant.

The Landlord's agent stated that the Landlord denied entering the rental unit in January 2017.

Analysis

The Notice was issued pursuant to section 47 of the *Residential Tenancy Act*. The reason cited on the Notice was that the Tenant was repeatedly late paying rent. The

Landlord's agent confirmed during the hearing that the reason for ending the tenancy was actually because the Landlord wishes to move family members into the rental unit. This is also confirmed on the Notice as the Landlord wrote that the reason for issuing the Notice was because she intended to move her family into the basement suite.

As I informed the parties during the hearing, the Landlord's desire to move family members into the rental unit is not a valid reason for issuing a notice to end tenancy under section 47(4). Accordingly, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the *Act*.

The Tenant seeks an Order that the Landlord's right to enter the rental unit be restricted and that she be permitted to change the locks on the rental unit. The Landlord did not testify, although through her agent she denied entering the rental unit as alleged. The Tenant bears the burden of proving her claim on a balance of probabilities and I am unable to find, based on the evidence and testimony before me, that the Landlord breached section 29 of the *Act*.

The Landlord is cautioned to follow section 29 should she wish to enter the rental unit and is reminded of the Tenant's right to quiet enjoyment as provided in section 28 and which reads as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Should the Landlord breach the Tenant's right to quiet enjoyment the Tenant is at liberty to apply for monetary compensation for any related devaluation of her tenancy.

Similarly, the Tenant's request for an Order permitting her to change the locks is dismissed. Notably, even in the event I had granted her request, she would be required to provide a key to the Landlord.

The Tenant also seeks an Order that the Landlord issue receipts for the payment of rent, the security deposit and the pet damage deposit. Section 26 of the *Act* provides as follows:

Rules about payment and non-payment of rent

26 (2) A landlord must provide a tenant with a receipt for rent paid in cash.

As noted, the Landlord attempted to introduce copies of rent receipts in evidence. The Tenant denies receiving such receipts; further, as the Landlord failed to provide those receipts to the Tenant in accordance with the *Residential Tenancy Branch Rules of Procedure*, the receipts are inadmissible.

I am satisfied the Tenant paid rent and I therefore Order as follows:

- 1. By no later than June 15, 2017, the Landlord shall provide to the Tenant receipts for the payment rent during the tenancy.**

Should the Tenant disagree with the information contained in the Landlord's receipts, she may apply for further Orders to confirm the date of rent payments.

The parties agreed the Tenant paid a \$400.00 security deposit; accordingly, I Order as follows:

- 2. By no later than June 15, 2017, the Landlord shall provide to the Tenant a receipt for the payment of the \$400.00 security deposit.**

The Tenant also claimed she paid a \$400.00 pet damage deposit. The Landlord disputed this claim. As I am unable to reconcile this discrepancy, and the Tenant bears the burden of proving her claim, I find she has failed to meet the burden of proving she paid a pet damage deposit.

I award the Tenant recovery of the filing fee and authorize her to deduct \$100.00 from her next month's rent as recovery of the filing fee.

Conclusion

1. The Tenant's Application for an Order canceling the Notice is granted.

2. The Tenant's Application for an Order restricting the Landlord's right to enter the rental unit is dismissed for lack of evidence.
3. The Tenant's Application for an Order authorizing her to change the locks is dismissed.
4. By no later than June 15, 2017, the Landlord shall provide to the Tenant receipts for the payment rent during the tenancy.
5. By no later than June 15, 2017, the Landlord shall provide to the Tenant a receipt for the payment of the \$400.00 security deposit.
6. The Tenant shall recover the \$100.00 filing fee and may deduct this sum from her next months' rent payment.

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: June 2, 2017

Residential Tenancy Branch