



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, CNC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order restricting the Landlord’s access - Section 70;
2. An Order cancelling a notice to end tenancy - Section 47; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a restriction of the Landlord’s right of entry?

Is the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The Tenant originally moved into the unit in April 2015. The Parties signed a tenancy agreement for another tenancy to start September 1, 2017. Rent of \$2,650.00 is payable on the first day of each month. On February 16, 2018 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the “Notice”). The reason indicated on the Notice is that the Tenant assigned

or sublet the unit without the Landlord's permission. In the details of the Notice the Landlord also notes that the Tenant failed to pay the security deposit.

The Landlord states that the Tenant sublet the unit to other persons who live in the unit with the Tenant. The Landlord states that the Tenant was to have paid a security deposit on September 15, 2017 but that this was never paid. The Landlord states that it maintains financial records for the rental monies but that no financial records were provided for this hearing. The Landlord states that he has no receipt on record for the security deposit. The Landlord states that he did not pursue the payment of the security deposit because he saw that there was no damage occurring. The Landlord states that he then started to notice damage and on December 1, 2017 the payment was mentioned to the Tenant.

The Tenant states that the security deposit was paid in cash to the Landlord on September 15, 2017 as required by the tenancy agreement. The Tenant states that this date was asked for as it was difficult to pay the rent and the security deposit at the same time and needed another pay period. The Tenant describes the Landlord attending the unit and watching as the Tenant counted out the bills. The Tenant states that the Landlord was asked for a receipt but never provided one. The Tenant states that the Tenant pays rent in cash and despite asking repeatedly the Landlord never provided any receipts except for the rent paid for March 2018. The Tenant submits that the Landlord falsely accused the Tenant of not paying the security deposit only after a dispute with the Tenant.

The Tenant states that the Landlord has entered the unit without permission on 3 occasions between October and March 16, 2018. The Tenant states that on March 16, 2018 the Landlord entered without permission while the Tenant's son was at home and

that the Landlord refused to leave after the son asked the Landlord to leave. The Tenant states that the police had to be called. The Tenant states that since this last incident the Tenant changed the keyless entry code and the Landlord now does not have access to this code. The Tenant wants an order restricting the Landlord's access.

The Landlord states that he has every right to enter the common areas. The Landlord clarifies that the unit is not a unit in an apartment building. The Landlord states that he knocked before he was let into the unit each time except for the last time where he was not given permission to enter. The Landlord states that he left the unit when asked by the son and waited for the police outside of the unit.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia,

- the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement; or
- the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent.

A sublet occurs where an original tenant moves out of the unit and has a subletting agreement with a subtenant. Based on the undisputed evidence that the Tenant never moved out of the unit I find that the Tenant did not sublet or assign the unit and that the other occupants are roommates of the Tenant. As a result I find that this reason for the Notice is not valid to end the tenancy.

Noting that the Landlord did not dispute the lack of receipts given for cash rent payments, I find the Landlord's evidence of a lack of a receipt being present for the security deposit to lack substance to support that no security deposit was paid. I also consider that the Landlord provided no accounting records showing the collection of any monies from the Tenant. As the Tenant's evidence sounded credible, detailed and

straightforward in relation to the payment of the security deposit I find on a balance of probabilities that the Landlord has not sufficiently substantiated that the payment was not made. As a result I find that the Notice is not valid for this reason either and I cancel the Notice. The tenancy continues.

Section 70(2) of the Act provides that if satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29 of the Act, an order may be made to

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit.

Given the Landlord's evidence that he did enter the unit on one occasion without permission or notice and given the Tenant's persuasive evidence of such entry on more than one occasion I find on a balance of probabilities that the Landlord did enter the unit without permission or right and is likely to enter the unit without proper authority or permission. As such I authorize the Tenant to continue to use the changed entry code without providing that code to the Landlord and I prohibit the Landlord from changing the entry code or replacing the keyless entry or otherwise obtaining entry to the unit without the Tenant's express permission or without written notice of entry as set out in section 29 of the Act.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from any future rent that may be payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect. The Landlord's right of entry to the unit is restricted.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. This claim may be fully satisfied by a reduction from any rent payable. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 11, 2018

Residential Tenancy Branch