



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC OLC LRE OPT RR PSF

Introduction

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. on May 2, 2019. The landlord's lawyer who was her authorized representative attended the hearing and is hereinafter referred to as 'the landlord'. He gave sworn testimony and was given a full opportunity to be heard, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord provided evidence that two Notices to End Tenancy were served to the tenant on March 29, 2019, one was a One Month Notice for cause dated March 29, 2019 to be effective May 1, 2019 and the second was a Two Month Notice for landlord's use of the property dated March 29, 2019 to be effective June 1, 2019. The landlord said the tenant served the Application for Dispute Resolution by a thumb drive in registered mail. I find the parties were legally served with the documents pursuant to sections 88 and 89 of the *Residential Tenancy Act* (the Act). The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for as follows:

- a) To obtain compensation of \$1700 for illegal lockout from their unit on March 31, 2019
- b) To dispute a one month Notice to end Tenancy pursuant to section 47 of the Act;
- c) To dispute a two month Notice to end Tenancy for landlord's use of the property pursuant to section 49;
- d) To suspend or set conditions on the landlord's right to enter the rental unit or site;
- e) To order the landlord to comply with the Act and tenancy agreement;
- f) To obtain an Order of Possession for the unit;
- g) To provide services or facilities required by the tenancy agreement or law;
- h) To reduce rent by \$700 for removal of services; and

- i) Compensation of \$1000 for damages.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they were illegally evicted and the locks wrongfully changed to lock them out? If so, are they entitled to compensation and in what amount? Are they entitled to relief from the Notices to End Tenancy served by the landlord and to be granted an Order of Possession for the Tenant? Have they proven entitlement to general damages?

Background and Evidence

The tenant/applicant did not attend the hearing. The landlord attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The landlord said they believed they had entered into a license to occupy arrangement with the tenant and they had no intention of creating a tenancy. There was no security deposit and the unit on February 1, 2019 was rented at \$350 a week for one month; then it was extended for one month because the new upstairs tenant could not move in until then due to medical issues. The subject suite is a basement unit in a house owned by the landlord and she occupied it herself prior to allowing the tenants to live there for a short time to help them out. All of her furnishings were in the unit and they used her belongings including her bed while she temporarily lived upstairs while she had no upstairs tenant. The landlord obtained a new tenant for upstairs, a friend, C., who also needed some assistance and has signed a lease to pay \$3,000 a month rent. The landlord wanted to move back into her unit so served the Two Month Notice for landlord's use.

She also received a letter from a law firm in another city advising her that she was guilty of copyright infringement for downloading two named movies. The landlord states she has no knowledge or ability to do this and the traced IP address was not hers but it was traced to her home location. She served the One Month Notice to End Tenancy for cause based on the illegal activity of the tenant for which she could be found liable and criminally convicted and subject to large fines (*Copyright Act* s. 41.25-42). She also had a verbal threat from the tenant and reported it to the police. The One Month Notice alleged:

"The tenant has jeopardized a lawful right or interest of another occupant or the landlord".

The landlord provided letters regarding the copyright infringement and traced IP address. She also provided a copy of a new lease signed for the upstairs unit for \$3000 a month and a declaration of her intent to re-occupy her own suite.

Included with the evidence are copies of the Notices to End Tenancy.

The tenant has requested that the Notices be set aside and cancelled as they do not believe the landlord is acting in good faith. They also claim damages of \$1700 for illegal lockout and withdrawal of services. However they did not attend to support their claim. The landlord also submitted a monetary claim for damages.

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

Analysis:

Although the lawyer for the landlord ably contended that this situation was a 'license to occupy', I find a license to occupy is included in the definition of a tenancy agreement in section 1 of the Act. Residential Policy Guideline 9 clarifies the differences. It states that "If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created". It notes some factors that might weigh against the finding of a tenancy such as *payment of a security deposit is not required, the owner retains access to, or control over, portions of the site, the owner retains the right to enter the suite without notice, the parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations, the parties have agreed the occupier may be evicted without a reason or vacate without notice or the written agreement suggests there was no intention that the Act would apply*. I find in considering all the factors, that a tenancy was created. Although there was no security deposit, a lease using the residential tenancy lease form was signed for rental of \$350 a week for a month with no expiry date, the evidence is that the tenants had exclusive possession of the basement suite and the landlord gave notice of entry for inspection as required by the Act. Although some generosity is alleged to have been the consideration, I note that \$350 a month may be a reasonable rent for this basement unit.

In respect to the One Month Notice to End Tenancy for cause, I find the landlord's evidence credible that the tenants engaged in illegal activity by downloading copyrighted material. The landlord's credibility is well supported by the letters from another law firm alleging this and the tracing of the IP address. I find the landlord had good cause to end the tenancy for "jeopardizing a lawful right or interest of the landlord".

Furthermore, I find the weight of the evidence is that the landlord intended in good faith to re-occupy the unit herself. I find she has already moved in as the tenants have

vacated and her new tenant has occupied the upper unit. A copy of the lease for the upper tenant supports her evidence.

Although the tenant has vacated, the landlord requests an Order of Possession. In a situation where the tenant has unsuccessfully disputed a Notice to End Tenancy pursuant to sections 47 or 49, those sections provide the landlord is entitled to an Order of Possession.

In respect to the tenants' claim for damages, I find insufficient evidence to support their claim and they did not attend to support it. I dismiss their claim for damages. I dismiss the other claims of the tenant as they are moot since they have vacated. They also did not attend to support them.

In respect to the landlord's claim for damages, I find it is not appropriate for me to consider this kind of claim on the tenants' application. The landlord is at liberty to make her own application for damages with sufficient proof and receipts against the tenant within the two year time limit from the time the tenancy ended.

Conclusion:

The tenant's application is dismissed in its entirety without leave to reapply. Their filing fee was waived. I find the landlord entitled to an Order of Possession effective two days from service.

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 2, 2019

Residential Tenancy Branch