



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOLE HILL COMMUNITY HOUSING
SOCIETY and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *OPC, CNC MND, MNR, OLC, RP, PSF, FF*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for damages and for the recovery of the filing fee. The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*, provide services and to carry out repairs.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself and was accompanied by her agent. The landlord was represented by their agents.

As both parties were in attendance, I confirmed service of documents. The landlord stated that she was not an applicant and therefore had not served the tenant with the notice of hearing package. After an explanation, the landlord understood that she was both - an applicant and a respondent as both parties had made application. However, despite her perception of not being an applicant, the landlord did serve her evidence on the tenant. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the landlord has applied for a monetary order for damages and the tenant has applied for other remedies. Since these sections of the parties' applications are unrelated to the main section which is to dispute a notice to end tenancy for cause, I dismiss these sections of the parties' applications with leave to reapply.

Accordingly this hearing only dealt with the landlord's application for an order of possession and for the recovery of the filing fee and the tenant's application to dispute the notice to end tenancy.

Issues to be decided

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the landlord entitled to the filing fee?

Background and Evidence

The tenancy at this rental unit started in March 2014. Prior to 2014, the tenant had rented a different unit from the same landlord in another building. The tenancy at that unit started in 2004. The monthly rent is subsidized, and the tenant's portion is \$650.00.

Both parties agreed that an incident took place on the night July 29, 2019 which was discovered on the morning of July 30, 2019. A male who is not a tenant, was found sleeping inside the storage locker room. The tenant agreed that she had provided the key of her storage locker to a friend to enable him to store some of his uncle's belongings. The friend is not a tenant, but his uncle is. The friend was found sleeping in the locker room on July 30, 2019.

As a security measure, the landlord re-keyed all the lockers and requested the tenant to cover the cost of doing so. The landlord also took away the tenant's privileges regarding use of a storage locker and requested her to empty it and return the key. The landlord gave the tenant time to do so and even extended the time up to August 16, 2019. As of August 21, 2019, the tenant had not emptied her locker or returned the key and therefore the landlord served the tenant with a notice to end tenancy for cause.

The notice alleges that:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or the lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

The tenant or person permitted on the property by the tenant has engaged in illegal activity that has or is likely to:

- Damage the landlord's property
- Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant
- Jeopardize a lawful right or interest of another occupant or the landlord.

The tenant disputed the notice in a timely manner.

Analysis

In order to support the notice to end tenancy, the landlord must prove the grounds alleged.

In this case, based on the testimony of both parties, I find that the tenant did give her storage locker key to a person that was not a tenant in the building and that he was found sleeping in the locker room. I find that the tenant violated the terms and policies of the storage locker agreement.

The landlord agreed that other than this incident, there have been no other incidents or complaints regarding this tenant's use of the storage locker during this tenancy of approximately 11 years.

I find that the tenant was apologetic and agreed to comply with the policies of the locker storage agreement. The tenant even agreed to cover the cost to re-key the storage lockers in the amount of \$306.61.

Even though the tenant did violate the terms of the storage locker agreement, I find that it was a first time in 11 years. I further find that it appears that this incident was isolated and did not result in extraordinary damage to the rental property. Therefore, I am not satisfied that the landlord has provided reasons that justify bringing this tenancy to an end. I also find that the actions of the tenant do not justify revoking her storage locker privileges.

Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated August 21, 2019. As a result, the tenancy shall continue in accordance with its original terms. Since the landlord has not proven her case, she must bear the cost of filing this application.

Conclusion

The notice to end tenancy is set aside. The tenancy will continue.

The tenant will pay the landlord \$306.61 towards the cost of re-keying the storage lockers.

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: October 29, 2019

Residential Tenancy Branch