

DECISION

Dispute Codes CNC, LAT, MNR, MNDC, O, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Tenant applied to cancel a Notice to End Tenancy issued by the Landlord, to authorize the Tenant to change the locks, for monetary compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

The Landlord applied for monetary compensation under the Act or tenancy agreement, for unpaid rent, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

At the outset of the hearing the Tenant informed me that she had vacated the rental unit and was no longer seeking to change the locks or cancel the Notice to End. Both parties also agreed the Notice to End Tenancy was not validly completed by the Landlord.

Issues(s) to be Decided

Is the Tenant entitled to the monetary compensation claimed?

Is the Landlord entitled to the monetary compensation claimed?

Background and Evidence

At the outset of this Decision, I wish to note that I have reviewed all evidence received by the branch in this matter, however, in this Decision I am only outlining the evidence which is relevant to making the determinations in this matter.

The rental unit is in an older condominium building and work was going to be done to the plumbing in the building by a third party.

In September of 2009, the Tenant received a notice from the third party that this work was going to be done in the rental unit. She emailed the Landlord to enquire about the work. The Tenant explained her misgivings about letting people in the rental unit without the Landlord informing her of the work to be carried out.

The parties then had a phone conversation and the Landlord sent an email to the Tenant confirming the discussion and agreement they had reached regarding the work.

The Landlord wrote explaining the nature of the work, a plumbing refit, and explained she was nominating two different people as her Agents and assured the Tenant that, "Each time entry is required to the suite, if you are not home, the personel completing the work will be supervised AT ALL TIMES by a strata council member." [Reproduced as written.]

The Tenant replied that she wanted 24 hour notice for each entry to the rental unit in accordance with the Act.

Shortly after this, the schedule was changed for the work to be done to the unit. The Tenant then lost heat in the rental unit, which appears not to have been related to the plumbing issues. She had no heat from September 29, to October 23, 2009. The Tenant also became ill and had to reschedule some of the work being done.

The Tenant then experienced difficulties dealing with one of the Agents for the Landlord, who was president of the strata council and who asserted their right to schedule the work on behalf of the strata council of the building. It appears that neither the Landlord nor the strata council had much regard for the Tenant's rights in the tenancy.

On several occasions workers entered the rental unit without notice to the Tenant. On one occasion a worker entered the unit, without notice or knocking, while the Tenant was home. He had keys supplied by the strata council.

Furthermore, workers were entering the unit without the supervision as promised by the Landlord.

Many emails were exchanged between the Landlord and the Tenant. There were times when the Tenant denied entry to the unit by these workers, or asked them to leave when they had surpassed the scheduled appointment time. The Tenant had great difficulty dealing with the strata council president.

The Tenant reasonably requested compensation for loss of heat and quiet enjoyment from her Landlord. The Landlord then issued the invalid Notice to End Tenancy to the Tenant. Shortly after this, the Tenant provided the Landlord with a Notice to End Tenancy and vacated the rental unit on or about November 30, 2009.

The Landlord is claiming for lost rent for the month of December 2009, and for lost wages to attend the hearing.

The Tenant is claiming for loss of quiet enjoyment, for loss of heat and for her moving costs.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I dismiss the Landlord's Application and her claims. I find the Tenant provided the Landlord with her Notice to End the tenancy in accordance with the Act. The Landlord is not entitled to monetary compensation for unpaid rent, nor can she claim for lost wages to attend the hearing under the Act, in particular when she filed her own Application.

I find that the Landlord breached the Act and the agreement with the Tenant, by not providing the Tenant with heat, and by not giving the required Notices or promised supervision when the unit was being entered by third parties.

I find the Tenant has established a monetary claim for loss of heat in the rental unit. I allow the Tenant the sum of \$300.00 for loss of heat for September 29, to October 23, 2009.

While the Landlord is entitled, and indeed required, under the Act to make repairs to the rental unit as necessary, entry to the unit was not done in accordance with the Act, until very late in the work schedule. While there were events in which the Tenant did not cooperate with the Landlord, I do find the Tenant has established a loss of quiet enjoyment of the rental unit. Taking into account the foregoing, I find that the Tenant is entitled to \$500.00 for the loss of quiet enjoyment. I do not allow her claim for moving expenses under the Act.

I find the Tenant has established a total monetary award of **\$850.00**, comprised of the above described amounts and the \$50.00 filing fee. The Tenant is granted a monetary

order which she must serve on the Landlord as soon as possible. If not paid, the order may be enforced in Provincial Court.

Lastly, I note the Landlord appears to have little or no working knowledge of the Act, which applies to her rights and obligations as a landlord, as well as her renters. For example, in addition to the problems discussed above, the Landlord did not want to deal with the security deposit in this hearing, nor had she filed against it in this Application. This entitles the Tenant to apply for the return of double the security deposit and under the Act, the Landlord is precluded from claiming against the security deposit. Therefore, I have enclosed a guidebook to the Act for the use of the Landlord and recommend she review it.

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: December 21, 2009.

Dispute Resolution Officer