



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, LRE, OLC, PSF, RPP, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the tenants advocate (collectively the "tenant") and the landlord along with the landlord's agent (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

The filing fee was waived consequently this portion of the tenant's claim is dismissed without leave to reapply.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2007 on a month-to-month basis. Rent in the amount of \$650.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$325.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated July 31, 2016 by way of posting to her rental unit door. The 1 Month Notice indicates 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.

Landlord

The landlord seeks to end the tenancy based on a July 20, 2016 incident involving the tenant and the landlord's son. Specifically, the landlord reports that the tenant yelled and used profanities toward the landlord's youngest son. The tenant's behaviour intimidated his son to the point that his son retreated to the shed in tears and later vomited.

Tenant

It is the tenant's position that the landlord's 1 Month Notice is based on a single event that occurred 11 days prior to the notice. The tenant did not dispute this event took place; rather she contended that the landlord failed to show a series of events leading up to the 1 Month Notice.

The tenant is seeking damages in the amount of \$769.52.

In particular, the tenant seeks to recover the cost of two heaters in the amount of \$119.52. The tenant explained that the heat for the rental unit is controlled by the landlord who resides

upstairs. Previously the landlord provided two heaters to the tenant to provide additional heat to the rental unit. The tenant testified that both heaters caught on fire and as a result the landlord instructed the tenant to purchase two new heaters that he would later reimburse her for. The tenant indicated that after she submitted the receipts for the heaters the landlord refused to reimburse her.

Additionally the tenant seeks compensation in the amount of \$650.00 for the verbal and physical abuse she endured on an undisclosed date in July of 2016. The tenant's witness testified that on an unspecified date in July of 2016 she was visiting the tenant outside the rental unit when the landlord approached the tenant yelling and using profanities. The witness observed the landlord bring a clenched fist towards the face of the tenant. The police were called and a file number issued. No charges were laid.

In relation to the tenant's request to suspend or set conditions on the landlord's right to enter the rental unit, the tenant clarified that she only seeks to have the landlord provide notice of entry in accordance with the *Act*. The tenant explained that prior to the ongoing dispute; the landlord would enter the rental unit to access the breaker box without notice.

The tenant seeks to recover her personal property that is stored in the landlord's garage. The tenant testified that the landlord has recently changed the locks to the garage thereby preventing the tenant access to her stored items.

Landlord reply

The landlord testified that the tenant did not notify him of the broken heaters or fire and at no time did he instruct the tenant to purchase new heaters. The landlord further testified that the allegations of physical abuse are untrue. The landlord acknowledged that he changed the locks to the garage and the tenant has stored items in the garage.

Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of testimony and a written statement describing the July 20, 2016 event that led to the 1 Month Notice.

The tenant does not dispute the July 20, 2016 incident. Although I do not find this single event over the course of a nine year tenancy constitutes a significant interference I do find the behaviour as described by the landlord as unreasonable and not the type of behaviour to which

the landlord's young son should be subjected. For this reason, I find the tenant is responsible for unreasonably disturbing another occupant and therefore dismiss the tenant's application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

As per the testimony of the parties, at one point during the tenancy the landlord provided two heaters to the tenant and installed a fireplace. Further the parties agreed the tenant had forced air heating throughout the rental unit. I find the landlord provided heat as per the tenancy agreement and the tenant provided insufficient evidence to substantiate she notified the landlord of the defunct heaters. For this reason, I dismiss this portion of the tenant's claim without leave to reapply.

The tenant and her witness provided testimony in relation to a verbal and physical incident that occurred sometime in July of 2016 between the tenant and the landlord.

Neither the tenant nor the witness could provide a date on which the alleged assault took place. The tenant did not provide a police report detailing the incident, only a police file number. The tenant testified she was physically attacked by the landlord; whereas the witness testified the landlord threatened the tenant but did not actually physically assault her. Based on the discrepancy between the tenant and witness testimony and in the absence of a police report or documentation of charges laid I find the tenant has failed to provide sufficient evidence to support she was verbally and physically attacked by the landlord. Based on this, I dismiss this portion of the tenant's claim seeking compensation in the amount of \$650.00.

In relation to the tenants request to suspend or set conditions on the landlord's right to enter the rental unit, I remind the landlord to provide written notice of entry in accordance with section 29 of the *Act*.

As this tenancy is set to end, I order the landlord to grant the tenant access to the garage to retrieve her stored belongings.

Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective two (2) days after service on the tenant.

The landlord is ordered to grant the tenant access to the garage to retrieve her stored belongings.

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 3, 2016

Residential Tenancy Branch