



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNR, CNC and FF

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether two Notices to End Tenancy, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, and one Notice to End Tenancy, served pursuant to section 46 of the Act, should be set aside, and if the Tenant is entitled to recover the filing fee from the Landlord for the cost of the Application for Dispute Resolution, pursuant to 72 of the Act.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 06, 2008, and that they have a written tenancy agreement.

The Landlord and the Tenant agree that a 10 Day Notice to End Tenancy for Unpaid Rent was posted on the front door of the rental unit on August 07, 2008. This Notice, which was submitted in evidence, is not signed by the Landlord.

The Landlord and the Tenant agree that a 1 Month Notice to End Tenancy for Cause was posted on the front door of the rental unit on July 26, 2008, which indicated that the Tenant was required to vacate the rental unit on August 27, 2008. The reasons stated for the Notice to End Tenancy were that the Tenant a person permitted on the property by the Tenant has caused extraordinary damage to the rental unit or property, and that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after receiving written notice to do so.

The Landlord and the Tenant agree that a second 1 Month Notice to End Tenancy for Cause was posted on the front door of the rental unit on August 19, 2008, which

indicated that the Tenant was required to vacate the rental unit on September 19, 2008. The reasons stated for the Notice to End Tenancy were that the Tenant a person permitted on the property by the Tenant had significantly interfered with or unreasonably disturbed another occupant or the landlord.

The Landlord presented the following relevant evidence and arguments to support the Notice to End Tenancy for Cause:

- The Tenant has parked a vehicle on the residential property, which she describes as a “derelict” vehicle
- The Landlord has verbally advised the Tenant to remove the vehicle on at least two occasions and has given two written notices to have the vehicle moved
- The Tenant has not moved the vehicle, in spite of the verbal and written direction
- The Landlord stated that although there are no terms in the tenancy agreement that restrict parking on the residential property, she understood that the Tenant would park one vehicle on the residential property
- The Landlord stated that she did not anticipate that the Tenant would park a derelict vehicle on the residential property
- The Landlord agreed that she had asked the Tenant not to park on the road, as it obstructed her vision
- The Landlord stated that oil from vehicle(s) owned by the Tenant has stained the rear portion of her driveway
- The Landlord stated that she did not ask the Tenant to clean the stains prior to serving him the Notice to End Tenancy on July 26, 2008
- The Landlord stated that on August 19, 2008, at 6:00 a.m., the Tenant began playing loud music, which continued to play until approximately 2:00 p.m.
- The Landlord stated that she could hear the music clearly in her residence, which is connected to the rental unit by a common door, and that it disturbed her
- The Landlord stated that the Tenant leaves his bathroom fan on for extended periods of time, sometimes leaving it on overnight
- The Landlord stated that she asked him to shut it off on August 27, 2008, but he did not comply with her request.

The Tenant presented the following evidence and arguments which are relevant to his application to cancel the Notice to End Tenancy for Cause:

- The Tenant submitted photographs of a Camaro that is in reasonably good condition, and stated that the vehicle is not a derelict vehicle
- The Tenant stated that he has storage insurance for the vehicle
- The Tenant stated that it was his understanding that he could park one vehicle on the residential property

- The Tenant stated that he intended to park his second vehicle on the road, but he was asked by the Landlord not to park on the road
- The Tenant stated that the oil stains were on the driveway prior to his tenancy
- The Tenant submitted a letter signed by his father, in which the father stated that the driveway was stained with oil prior to this tenancy
- The Tenant stated that the oil stains could not have been caused by his Camaro, as it is parked at the front of the driveway
- The Tenant submitted photographs to show that the Camaro is parked at the front of the driveway, ahead of the oil stains
- The Tenant stated that he parks his truck behind the Camaro, which could not have stained the driveway as he installed a new engine in it in 2007
- The Tenant submitted several photographs of the driveway, which has numerous stains in different areas, including the area used by the Landlord
- The Tenant stated that his clock radio accidentally came on sometime after 7:00 a.m. on August 19, 2008, after he left for work
- The Tenant stated that the clock radio remained on until he returned home at 1:00 p.m. on August 19, 2008
- The Tenant stated the clock radio was not particularly loud during this period of time
- The Tenant agreed that he does regularly leave his bathroom fan on, as it automatically comes on when the bathroom light is activated
- The Tenant argued that the Landlord has the right to replace or repair the fan if she is bothered by the noise the fan creates
- The Tenant stated that the Landlord did come to his door on August 27, 2008, but he did not answer the door as he did not wish to speak with her
- The Tenant stated that the Landlord began pounding on his door and yelling at him to shut the fan off
- The Tenant stated that the Landlord then began pounding on the common door that separates their residences, so he phoned the police
- The Tenant stated that the police did attend, at which time he agreed to shut off the fan.

Analysis

Section 46(1) of the *Act* stipulates that a landlord may end a tenancy if rent is unpaid on any day after the rent is due by giving a notice to end tenancy. Section 46(2) of the *Act* stipulates that a notice to end tenancy under this section must comply with section 52 of the *Act*. Section 52(a) of the *Act* stipulates that to be effective a notice to end tenancy must be signed and dated by the landlord or the tenant giving the notice.

In the circumstances before me I find that the Landlord did not sign the 10 Day Notice to End Tenancy that was posted to the Tenant's door on August 07, 2008. I therefore find

that the Notice was not effective, as the Landlord did not comply with section 52(a) of the *Act*.

After considering all of the written and oral evidence submitted at this hearing, I have determined that the Landlord has not satisfied the legislative requirements to end a tenancy for cause.

Specifically, I find that the Landlord has not established that the Tenant has caused extraordinary damage to the rental property, which is cause to end a tenancy pursuant to section 47(1)(f) of the *Act*. Although there are some oil stains on the driveway that appear relatively new, I find that there was insufficient evidence presented to establish that the Tenant caused the stains. In any event, I am not satisfied that the oil stains constitute extraordinary damage, as other areas of the driveway are stained, and all of the damage can be repaired with relative ease.

I also find that the Landlord has not established that the Tenant has breached a material term of the tenancy agreement and has not corrected it within a reasonable time after being given written notice to do, which is cause to end a tenancy pursuant to section 47(1)(h) of the *Act*.

In reaching this conclusion, I found that parking one or two vehicles on the driveway is not a material term of this tenancy agreement. I note that the written tenancy agreement did not place any restrictions on parking, although both parties indicate that they understood at the beginning of the tenancy that the Tenant would only park one vehicle in the driveway. I find that the parties had a subsequent conversation regarding parking that caused the Tenant to believe the Landlord would prefer him to park his second vehicle on the driveway, rather than on the road. In the absence of written terms in the tenancy agreement, I find that these parties did not clearly agree on the terms and conditions of the parking and I do not find that parking is a material term of their tenancy agreement. As I do not find that the Tenant breached a material term of the tenancy agreement, I can not conclude that the Landlord has established grounds to end this tenancy pursuant to section 47(1)(h) of the *Act*.

I also find that the Landlord has not established that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord of the rental unit, which is cause to end a tenancy pursuant to section 47(1)(d)(i) of the *Act*.

In reaching this conclusion, I found that one incident of leaving the music playing during the daytime does not constitute an unreasonable disturbance. In reaching this conclusion I was heavily influenced by fact that the music played during the daytime and by the Tenant's statement that the incident was an accident. Although this behaviour could constitute an unreasonable disturbance if it happened repeatedly, I do not find that this isolated incident is grounds to end this tenancy.

In reaching this conclusion, I also found that leaving a bathroom fan running continuously does not constitute an unreasonable disturbance. In reaching this conclusion I was heavily influenced by the fact that the Landlord has the ability to reduce the noise created by the fan, either by insulating it or replacing it with a quieter model.

I find that the Tenant's Application for Dispute Resolution has merit and I find that the Tenant is entitled to compensation, in the amount of \$50.00, for the cost of filing this Application for Dispute Resolution.

Conclusion

As I have determined that the Landlord has not satisfied the legislative requirements to end a tenancy for cause, I am setting aside the One Month Notice to End Tenancy for Cause dated July 26, 2008, and the One Month Notice to End Tenancy for Cause, dated August 19, 2008, pursuant to section 68(2)(b) of the *Act*, and I find that the tenancy shall continue until it is ended in accordance with the *Act*.

As I have determined that 10 Day Notice to End Tenancy for Unpaid Rent was ineffective, I am setting aside the Notice, pursuant to section 68(2)(b) of the *Act*, and I find that the tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Tenant has established a monetary claim, in the amount of \$50.00, in compensation for the filing fee paid by the Tenant for this Application for Dispute Resolution. Based on these determinations, I hereby authorize the Tenant to reduce the next monthly rent payment by \$50.00.

In an effort to clarify the terms of this tenancy agreement, I find that from this day forward the Tenant is only entitled to park one vehicle on the residential property. The Tenant has the right to continue parking the Camaro that he currently has parked on the residential property, as I do not find it to be a derelict vehicle, providing he does not park any other vehicles on the property. Both parties should be clearly aware that their tenancy agreement does not determine whether the Tenant is able to park on public property.

Date of Decision: September 03, 2008
